

1 STATE OF NEW YORK : NASSAU COUNTY

2 COUNTY COURT : PART XIV

3 THE PEOPLE OF THE STATE OF NEW YORK, :

4 - against - :

IND: 1456N-00

5 PAUL SCRIMO, :

JURY TRIAL

6 Defendant. :

7 -----X

8 May 16, 2002
9 262 Old Country Road
Mineola, New York

10 B E F O R E:

11 THE HONORABLE JEFFREY BROWN,
12 County Court Judge.

13 A P P E A R A N C E S:

14 (As previously noted.)

15 * * *

16 THE CLERK: Case on trial. All parties are
17 present. The jurors are not present.

18 People ready?

19 MR. BIANCAVILLA: Ready.

20 THE CLERK: Defense ready?

21 MR. CHAMBERLAIN: Morning, Judge.

22 Defense ready.

23 COURT OFFICER: Jury entering.

24 (Whereupon, the sworn jurors entered the
25 the

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1 courtroom and resumed their respective seats.)

2 THE CLERK: Both sides stipulate all jurors
3 are present and seated properly.

4 MR. BIANCAVILLA: Yes.

5 MR. CHAMBERLAIN: So stipulated.

6 THE COURT: Good morning, ladies and
7 gentlemen. We are ready to continue with the trial.

8 Call your next witness, Mr. Biancavilla.

9 MR. BIANCAVILLA: Police Officer Pamela
10 Stark.

11 P O L I C E O F F I C E R P A M E L A S T A R K , a
12 witness called on behalf of the People, having been duly
13 sworn, testified as follows:

14 COURT OFFICER: In a loud, clear voice, give
15 your full name, spelling your last name, shield number
16 and present command.

17 THE WITNESS: Pamela F. Stark. Shield 2626,
18 command is court liaison.

19 THE COURT: You may inquire.

20 DIRECT EXAMINATION

21 BY MR. BIANCAVILLA:

22 Q Good morning, Officer Stark.

23 A Good morning.

24 Q Officer Stark, prior to being assigned to court
25 liaison, where were you assigned?

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1 A The Eighth Precinct.

2 Q Were you working in the Eighth Precinct on
3 Thursday, April 13th, 2000?

4 A Yes.

5 Q How long have you been a police officer?

6 A I'm in my fifth year.

7 Q On Thursday, April 13th, of 2000, how long had you
8 been a police officer?

9 A I believe I was in my third year.

10 Q What were your duties as a police officer assigned
11 to the Eighth Precinct?

12 A I had RMP -- that's radio more patrol car -- 810
13 Farmingdale, nights, 1900 hours to 0700 hours.

14 Q Was that a steady shift that you worked?

15 A Yes, I worked three on, four off, two on, three
16 off.

17 Q On Thursday, April 13th, 2000, were you working on
18 that day?

19 MR. CHAMBERLAIN: With all due respect, I
20 believe Thursday was April 14th, just so the record is
21 clear.

22 THE COURT: I don't have a calendar in front
23 of me. You can cross her on that fact.

24 MR. CHAMBERLAIN: Fine.

25 Q What tour of duty were you working?

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1 A Can I check?

2 Q Sure.

3 A I have Thursday, April 13th, in my memo.

4 Q What tour of duty were you working?

5 A 1900 hours to 0700 hours.

6 Q So that was 1900 hours --

7 A On the 13th.

8 Q Seven o'clock at night?

9 A On Thursday, until 7:00 a.m.

10 Q What date?

11 A The 14th.

12 Q Which would have been?

13 A Friday. I have Friday because I was working

14 Friday the 14th. Saturday is the 15th.

15 Q That was a tour of duty that you were working?

16 A Yes.

17 Q Did there come a time when you were directed to

18 respond to 196 Main Street?

19 A Yes.

20 Q Approximately what time were you directed to

21 respond to 196 Main Street?

22 A 2112 the call came over, it was dispatched.

23 Q What is 2112?

24 A 9:12 at night.

25 Q Did you respond to the scene?

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1 A Yes, I did.

2 Q Approximately what time did you respond to the
3 scene?

4 A I arrived at 2115.

5 Q That would be 9:15 in the evening?

6 A Yes.

7 Q Why were you directed to that scene?

8 A It was a well check call.

9 Q What is a well check?

10 A We receive well check calls when family members,
11 friends, anybody is trying to get in touch with somebody and
12 they haven't been able to. We respond and hopefully find
13 the person.

14 Q Is that what you did that night?

15 A Yes.

16 Q When you got to 196 Main Street at approximately
17 9:15, tell the jury what you did?

18 A I entered through Main Street, which was Captain
19 Andy's. I asked for what showed on my computer, the
20 complainant, Sven. I asked to meet with him.

21 Q Did you have conversation with him?

22 A Yes. I asked numerous questions as to why I was
23 there on the call.

24 Q As a result of that conversation, what did you do?

25 A The information that I received, that I was there

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1 because he had received a call from his wife at about three
2 o'clock that his tenant of approximately eight years who was
3 a punctual woman had not shown for work and there was no
4 answer at her door. She lived by herself and he had known
5 her for quite sometime and it was totally out of character.

6 Q So what did you do?

7 A I walked through the restaurant with him heading
8 to the back of the restaurant, walked out the door. I then
9 asked him if he seen her car, is her car parked around here,
10 and he showed me her vehicle which I think was a blue and
11 white Blazer parked in the back.

12 He then escorted me to a door that was just north
13 of the outside of his restaurant. It was two metal white
14 doors. He unlocked the door. There was no glass or
15 anything. He unlocked the door and then we entered up a
16 very narrow stair that came to the top to a platform.

17 At the top of platform there was an outside storm
18 door to the left and then there was one apartment door right
19 in front where I saw shoes. There was a door mat. We
20 knocked on the door. I kept on saying, police, open up,
21 police, open up. He was yelling because he was familiar
22 with her, Ruthy, Ruthy, open the door, open the door.

23 At that point in time he had a large amount of
24 keys with him and I said, you know, maybe -- where does that
25 door lead to, is there another entrance?

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1 Q When you asked him what did that door lead to --

2 A I meant the storm door on the top of the landing.

3 Q Let me stop you. Let me ask the questions so the
4 court reporter can take it down and then you can answer the
5 question?

6 A Sorry.

7 Q Which door are you referring to?

8 A I was referring to the storm door that was at the
9 top of the landing at the top of the stairs.

10 Q Then what happened?

11 A He said that that led out to the roof.

12 Q What did you do?

13 A I went out on the roof and he showed me the
14 windows and where they were in proximity of the apartment.

15 Q Explain to the jury how you checked that?

16 A I checked to make sure if they were secure, if
17 there was any entry. I went first to the bathroom window,
18 which he told me. I couldn't see in because it was dark but
19 everything was secure.

20 Then I went around and I walked up to what was the
21 kitchen and there was a light on above the table. There was
22 two -- two drink glasses, a beer bottle to the right and a
23 greenish wine glass to the left. I saw nothing else out of
24 place. I saw a black cat. Those windows were also secure.
25 There was nothing out of place, nothing in the apartment.

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1 Q What is the next window you went to?

2 A The bedroom window was just a single window.

3 Blinds were shut in an upright position. I couldn't see
4 much. I was using my magazine light but I couldn't see
5 much.

6 Q What is a magazine light?

7 A Our flashlights we have. I then asked help
8 again --

9 MR. CHAMBERLAIN: Objection to the continuing
10 I did this and that. I would like questions and
11 answers.

12 THE COURT: Yes.

13 Q What did you do then?

14 A I asked him when was it that you received the
15 phone call from her. He said, Three o'clock. He said --

16 Q Phone call from who?

17 A From his wife saying that she received a call from
18 her job. He said, Three o'clock. And I said, Nobody had
19 heard from her from work? No. Then he said to me, She
20 hasn't been seen for two days. With that I said, Let's open
21 the door.

22 Q What did you do at that point?

23 A He got the key. He opened the door. I asked him
24 to stand out on the landing. I walked in --

25 MR. CHAMBERLAIN: Objection to the continuing

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1 what did you do then.

2 MR. BIANCAVILLA: Judge, it's a question.

3 THE COURT: It is a question,

4 Mr. Chamberlain.

5 MR. CHAMBERLAIN: I understand, but it's
6 narrative form.

7 THE COURT: If it goes on too long, you can
8 object.

9 Continue officer.

10 Q So after you observed the door, describe what
11 happened?

12 A I asked him to wait out on the landing. I went
13 inside. To the left was my first door to secure. It was a
14 bathroom. Everything looked fine.

15 Q When you looked into the bathroom, what did you
16 see?

17 A Everything looked intact. Nothing, I saw nothing
18 out of the ordinary.

19 Q What did you do then?

20 A Walked back into the small little hallway.

21 Q What did you do after you went in the small little
22 hallway?

23 A I walked into what is the kitchen.

24 Q What observations did you make when you went into
25 the kitchen?

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1 A I immediately saw two white socks.

2 Q What did you do when you saw two white socks?

3 A I walked to that doorway.

4 Q Explain to the jury what you observed?

5 A I saw a female slumped over to the left. I saw
6 one hand with the palm facing up, one hand with the palm
7 facing down and lividity throughout the hand. I knew then
8 the person was deceased.

9 Q What did you do then?

10 A I yelled to him, I'm sorry, she's deceased. Please
11 wait downstairs. I'm going to call for back up. They need
12 to know where I am.

13 Q What did you do then.

14 A I called for back up and an ambulance for 1072.
15 That's a pronouncement.

16 Q What happened then?

17 A I went back. The phone was ringing nonstop.
18 Where her face was was behind where the light could shine on
19 her. I flashed my magazine light. Then all of a sudden I
20 saw the cord and I yelled, Oh, shit.

21 Q Then what happened?

22 A I immediately took out my gun and went through
23 every other room making sure that it was secure.

24 Q Could you describe each room that you went through
25 and the appearance of each room that you went through?

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1 A The bathroom seemed very dry. I immediately
2 looked into the shower and sink. There was no water or
3 anything like that. I then walked into the kitchen. When I
4 was walking in, I did see napkins on the floor right before
5 the kitchen started. I saw, as I said before, there was a
6 beer bottle, a brown glass beer bottle. There was a
7 greenish wine glass on the table. There was a printed up
8 docket of like a ballad that was on the table and that hand
9 printed one was on the counter.

10 The sink and everything looked in place, neat and
11 clean, but I did notice on the table cloth it looked like
12 there had been ashes scattered and somebody had mushed them
13 into the table cloth. There was a ash tray and a couple of
14 chips in the ash tray.

15 MR. CHAMBERLAIN: Objection to the operation
16 of her mind as to what it looked like.

17 THE COURT: Sustained.

18 MR. BIANCAVILLA: Judge --

19 THE COURT: Whatever you observed, you can
20 describe.

21 A I observed ashes into the table cloth. I then --
22 I also saw something else. There was a vacuum cleaner out
23 in the kitchen and there was a calendar right on the side of
24 the refrigerator.

25 Q What did you observe about the calendar?

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1 A I observed that the last date -- she crossed out
2 every date, or somebody had. The last date that was crossed
3 out was the 10th of April which was a Monday.

4 Q What did you do at that point?

5 A Other observations, the other observation was in
6 her bedroom. I saw what was either a telephone or an
7 answering machine pulled from the wall on the floor and in
8 the living roomy heard a hum from a stereo like music had
9 been over. I saw a black leather coat that was on the
10 couch. I also saw a jean jacket on the chair in the
11 kitchen.

12 Q After you made those observations, what did you
13 do?

14 A I saw those observations as I made my search with
15 my gun. Then I immediately got in touch with my command and
16 I requested the detectives be notified and for a sergeant to
17 be at the scene immediately.

18 MR. BIANCAVILLA: Judge, may we have the
19 easel set up?

20 THE COURT: Yes, of course.

21 MR. BIANCAVILLA: I would ask People's 31 be
22 displayed on the easel?

23 May we have the witness step down?

24 THE COURT: Step into the well, please.

25 THE WITNESS: Sure.

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1 Q Now, Officer Stark, would you just point out to
2 the jury, when you arrived at that location and came up the
3 back stairs with Sven, can you point out to the jury how you
4 went on People's 31?

5 A Came up the hallway here.

6 Q Speak up.

7 A We came up the hallway here. We were at this
8 door. I then asked about this door that I had seen the
9 outside screen of the door. This is the roof. We then went
10 out and I looked into these two windows which were the
11 bathroom. He told me they were the bathroom but I couldn't
12 see in. I then walked up to the kitchen area which I could
13 see there was half a curtain and there was a light on above
14 the kitchen table.

15 Q What did you observe when you looked in the window
16 at that particular location?

17 A At that particular location I saw a beer bottle,
18 brown glass, and on the side I saw a green -- like a wine
19 glass on the table. To the right was a beer bottle. To the
20 left was the green glass and I saw a black cat.

21 Q Then what's the next thing that you did?

22 A I went to this bedroom window and the bedroom
23 window blinds were shut in an upper condition. I was
24 shining my magazine light to try and see inside and saw
25 nothing.

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1 Q What did you do at that point?

2 A That's when I told him we had to open the door.

3 Q How did you get back into the hallway?

4 A We went right through there. Came in here and he
5 opened up the door.

6 Q When you walked into the door there, show the jury
7 what you did?

8 A I walked into this bathroom and secured it, made
9 sure -- my training is to secure as you move and I saw that
10 nothing was out of the normal in this room. I saw the
11 closet. I saw everything. I believe there was a cat litter
12 bag in there. Everything was fine. Then I walked right in
13 here. As soon as I made entrance into here, I could see the
14 feet.

15 Q Point for the jury where you saw the feet?

16 A Right here.

17 Q Now, look at the photograph that's depicted -- I
18 think that's People's 21, is that how the body was
19 positioned when you saw the body?

20 A Yes.

21 Q Describe to the jury what you did next?

22 A At that point I shined -- I walked over. I saw
23 the lividity in that left hand. I also noticed that none of
24 the nails had been broken on the hand.

25 I then yelled to Sven who was the landlord, Please

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1 wait outside. Please go downstairs. I'm sorry, she's
2 deceased. I need to call for back up. I need to tell them
3 where I am, because it wasn't a known location for me. I
4 had been there for a year and never knew there was an
5 apartment there.

6 Q What did you then do?

7 A I called for back up and then I went back in and
8 shined my flashlight in here because it was around the
9 corner and there was no light. As soon as I saw the cord on
10 the neck, I yelled, Oh, shit, and then I drew my weapon,
11 walked over here, secured this area and then secured the
12 living room. This is the living room here.

13 Q Show us on the floor plan what you did?

14 A I walked through here, secured everything here,
15 then walked into the living room and secured it.

16 Q After you made sure everything was secured, what
17 you do?

18 A I called my command over my radio and requested
19 that a sergeant and detectives be notified immediately that
20 I had a homicide.

21 Q Look at those photographs and tell the jury, do
22 each of those photographs fairly and accurately represent
23 how the apartment appeared when you arrived there?

24 A Yes, they all -- they all represent.

25 MR. CHAMBERLAIN: May we have some

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1 clarification as to which photographs he's referring
2 to?

3 Q Read the number below each one?

4 THE COURT: Read off the People's exhibits
5 and tell us if it fairly and accurately represents.

6 A Twelve looks like the back to me. I was on this
7 side. I was over here, Captain Andy's. I was on the
8 opposite side here where I made entrance.

9 This looks like coming out of the restaurant, and
10 then going over here the entrance into the apartment.
11 That's number eight.

12 Number 13, yes, I walked over here and I did see
13 her car parked over here. Looks accurate to me.

14 Q What number is that?

15 A Number 13.

16 Number 29, I believe this is the living room here
17 or going into the living room. This is where the answering
18 machine, I believe, was pulled out, or the telephone. I
19 just looked at it on the floor. It was all mangled up.
20 That was the only thing out of order in the apartment. That
21 was it.

22 Thirty-two was the living room. This is what I
23 believe the stereo -- where the music -- a hum was coming
24 out of the speakers. On this side of the living room wall
25 was the brick.

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1 This is the kitchen, number 21, and this is her
2 bedroom and slightly -- the bed was totally made. She was
3 totally dressed.

4 Eighteen is the kitchen. The kitchen looks
5 actually perfect except that there were napkins on the floor
6 here that I had seen. I don't know if it's further up.

7 Q Okay.

8 A Sixteen is the hallway. She had stenciling on the
9 wall. It looks -- home sweet home, she had.

10 Here are the stairs, 15, that I entered.

11 Number 14, I'm not sure what number 14 is.

12 Q Okay.

13 A And this is Captain Andy's and that's number 11.

14 Q You can be seated. Thank you, officer.

15 Officer, I am going to direct your attention to
16 Wednesday, October 18th of 2000. Do you remember that day?

17 A Yes, I do.

18 Q Were you working that day?

19 A Yes.

20 Q What tour of duty were you working?

21 A 1900 hours to 0700 hours.

22 Q And that would be from 7:00 at night to 7:00 in
23 the morning?

24 A Yes.

25 Q Now, I'm going to direct your attention --

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1 withdrawn.

2 Did there come a time when you responded to --

3 THE COURT: Mr. Chamberlain?

4 MR. CHAMBERLAIN: I am waiting for the end of
5 the question. I would like to approach.

6 THE COURT: I haven't heard the question.

7 MR. CHAMBERLAIN: I'm waiting for the end of
8 the question.

9 MR. BIANCAVILLA: Please be seated until I
10 finish.

11 MR. CHAMBERLAIN: Please.

12 THE COURT: Finish your question.

13 Q Did there come a time when you responded to 25
14 Elizabeth Street in Farmingdale?

15 A Yes.

16 MR. CHAMBERLAIN: May we approach, your
17 Honor?

18 THE COURT: I don't see any -- I'll overrule
19 your objection with respect to this question.

20 MR. CHAMBERLAIN: I would like to approach.

21 THE COURT: You can come forward.

22 (Whereupon, the following took place at the
23 bench outside of the hearing of the jurors and the
24 defendant.)

25 THE COURT: Yes, Mr. Chamberlain?

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1 MR. CHAMBERLAIN: Your Honor, we are getting
2 into the statement that we discussed yesterday. I'm
3 not a hundred percent sure whether our colloquy
4 yesterday was fully on the record but I would like to
5 place on the record my objection to the introduction of
6 any part of this statement for these reasons.

7 There are no admissions here so there's no
8 basis for an exception to the hearsay rule. This
9 entire statement would be hearsay. So for that reason,
10 I would object to the entire statement. There's
11 also -- if the Court overrules that objection, then I
12 would like to go further with respect to the portion
13 Mr. Biancavilla wants to redact from this statement.

14 THE COURT: All right. Let's talk generally,
15 Mr. Biancavilla.

16 MR. BIANCAVILLA: I will rely on my
17 representations to the court yesterday, Judge.

18 THE COURT: Mr. Chamberlain, I see no --
19 nothing objectionable about the statement. Let's put
20 it this way. She will testify and you will make
21 objections. If I feel there's a reason to sustain the
22 objection, I will, and if it's an answered responded
23 to, I will strike it and tell the jury to disregard it.

24 At this juncture I am not about to make a
25 determination because I don't know what the witness is

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2 testifying to. All I have in front of me are these
3 notes.

4 MR. CHAMBERLAIN: Perhaps these noted --
5 bracketed, perhaps we should mark them as a court
6 exhibit at this point.

7 MR. BIANCAVILLA: I read it in the record
8 yesterday so there's a record of what I am going to be
9 asking.

10 THE COURT: Is that correct?

11 MR. CHAMBERLAIN: With respect to that, there
12 are statements in here that are not admissions.

13 THE COURT: There are many. It doesn't mean
14 it's an admission per se that somebody committed the
15 murder. It may be admission to certain elements of the
16 crime that the People have to prove.

17 MR. CHAMBERLAIN: I do not see anything in
18 here.

19 THE COURT: That's a question of fact for the
20 jury. I will make determinations as to evidentiary
21 rulings as to whether I feel it's appropriate for the
22 jury to hear. Now, if you feel something is
23 objectionable, stand, object and I'll rule at that
24 point.

25 MR. CHAMBERLAIN: The other part of my
objection is, above the entire statement, there are

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1 portions he wants to put in that concern an operation
2 of the defendant's mind. He said, for example, he
3 said, when they picked me up, I didn't mention Kane
4 because of the drugs.

5 Now, the only way you can understand that --
6 if you allow that in, the other questions that concern
7 the operation of his mind as to what he believes
8 happened and so forth should be allowed in. If he
9 elicits that and I object in front of the jury, it will
10 be out there.

11 THE COURT: It's like any statement someone
12 makes. I am not going to prevent the People from
13 eliciting the testimony. I will make rulings with
14 respect to evidentiary rulings with respect to
15 objections you may make.

16 Now, we have already redacted a large part of
17 it based on the People's representations. You objected
18 yesterday to allowing Mr. Biancavilla to lead which
19 might have alleviated some of the problems that you are
20 probably concerned about that you may say something
21 outside the area the People agreed -- the portions of
22 the testimony they can elicit into evidence.

23 Now, at this juncture I am not going to
24 prevent the People. I will rule on objections and --

25 MR. CHAMBERLAIN: Judge, as far as leading,

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1 it's my understanding we have a police officer, that he
2 prepares his witnesses --

3 THE COURT: Mr. Biancavilla?

4 MR. CHAMBERLAIN: No. I mean the witness.
5 He's preparing her to limit her answer to these
6 specific questions, but what I am saying is some of
7 these things cannot be exclude without allowing it in.
8 The redacted portions are hearsay in any event.

9 THE COURT: The redacted portions aren't
10 going into evidence. That's what redaction means.

11 MR. CHAMBERLAIN: I don't mean that. I mean
12 the portions that are not redacted.

13 THE COURT: First of all, this is a
14 statement, not testimony. This is a statement. I
15 don't know what comes out of the witness' mouth. I
16 have to listen, hear, and make determinations on a
17 question-by-question basis and that I will do.

18 Do you have anything more to add,
19 Mr. Biancavilla?

20 MR. BIANCAVILLA: No, Judge.

21 (Whereupon, the following took place in open
22 court.)

23 THE COURT: Bring the witness back in.

24 (Whereupon, the witness resumed the witness
25 stand.)

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1 MR. BIANCAVILLA: May I, your Honor?

2 CONTINUED DIRECT

3 BY MR. BIANCAVILLA:

4 Q Officer Stark, directing your attention to
5 Wednesday, October 18th, 2000, were you working that day?

6 A Yes.

7 Q What tour of duty were you working.

8 A 1900 hours to 0700 hours.

9 Q Did there come a time when you were directed to
10 respond to 25 Elizabeth Street?

11 A Yes.

12 Q What time were you directed to respond to 25
13 Elizabeth Street?

14 A 1912 hours which would be 7:12 in the evening.

15 Q What was the purpose of that call?

16 A A disturbance call.

17 Q How long did it take you to respond to that
18 location?

19 A Maybe four minutes.

20 Q When you got to the location, did you see anyone?

21 A Yes, I did.

22 Q Please describe the individual that you saw and
23 where you saw them?

24 A I parked my car out front and as I walked to the
25 location -- there's a glass lobby door in the apartments. I

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1 saw a middle aged man pacing inside the lobby.

2 Q Do you see him in the courtroom today?

3 A Yes, I do.

4 Q Please point to him and identify him by an article
5 of clothing that he's wearing?

6 A Green suit.

7 Q At the second table?

8 A Second table.

9 MR. BIANCAVILLA: May the record reflect the
10 identification of the defendant?

11 THE COURT: Yes, the record should reflect
12 that.

13 Q Describe for the jury what happened at that time?

14 A As I approached the building, I was with another
15 officer, 814, P.O. Wadsworth. We walked up and he exited
16 the front door and I said -- I asked him his name.

17 With that, he raised his hands in the air and he
18 said, Paul Scrimo. I didn't do it. John Kane did. I was
19 never in that apartment.

20 Q What happened then?

21 A P.O. Wadsworth asked him then why are we here
22 tonight.

23 Q What did Mr. Scrimo say?

24 A He said there was a male Hispanic in the rear of
25 his apartment building. It's been an ongoing problem and

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1 that he was trying to stay in the basement and that he had
2 confronted him in the parking lot because the male Hispanic
3 said, I think, something rude to his wife.

4 He said the male Hispanic did not say anything to
5 him, stared at him and flicked a cigarette, then walked off
6 toward Main Street. The male Hispanic was about five-seven,
7 150 pounds, white pants. Then he said he wasn't there
8 anymore.

9 Q What happened at that point?

10 A He then went on to talk again about what he was
11 initially bringing up.

12 Q And was that regarding the murder of Ruth
13 Williams?

14 A Yes.

15 Q Could you tell the jury what he said with respect
16 to that?

17 A He said that they were all out at Y.L. Childs,
18 Kane, Ruthy and himself, and that Ruthy was kissing on him
19 but only to whisper in his ears that she wanted drugs from
20 Kane. He told me that Kane is a drug dealer. He doesn't
21 give away drugs for free.

22 He said then they all left the bar and walked
23 toward Ruthy's apartment. He said that Kane and Ruthy went
24 up to the apartment while he went across to 7-Eleven to buy
25 beer and cigarettes and when he finished buying beer and

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1 cigarettes, he met Kane in an alleyway, gave him the beer
2 and cigarettes and said, I got to get home because my old
3 lady is going to be really angry at me. And he said as it
4 was, the time he got home, he got in trouble.

5 Q Now, did there come a time during the course of
6 that conversation that he mentioned anything about his
7 arrest?

8 A Yes, he said, When they picked me up, I -- I never
9 mentioned Kane because of the drugs. And then he said to
10 me, You're the officer who found Ruthy. He said, I'm really
11 sorry. I saw those pictures. They looked real terrible.

12 Q Thank you, Officer.

13 MR. BIANCAVILLA: I have nothing further for
14 this witness.

15 THE COURT: Mr. Chamberlain,
16 cross-examination?

17 MR. CHAMBERLAIN: Yes, Judge.

18 CROSS-EXAMINATION

19 BY MR. CHAMBERLAIN:

20 Q Police Officer Stark, did you know John Kane prior
21 to this?

22 A Never met him.

23 Q Did you know of him in the neighborhood?

24 A Not at all.

25 Q When you were first called up to view that

People - P.O. Stark - Cross

1 apartment, did you secure the apartment as soon as you
2 realized what happened?

3 A I never left the body. I never left the
4 apartment.

5 Q Did you touch anything or change anything in the
6 apartment?

7 A Not at all.

8 Q You mentioned a number of times here on direct
9 that the apartment was quite neat, is that correct, except
10 for the few things you mentioned?

11 A Yes.

12 Q Did you see any cigarette butts strewn around on
13 the floor?

14 A No.

15 Q You didn't move the body at all?

16 A I never touched the body.

17 Q So you wouldn't have been aware of any cigarette
18 butts under the body?

19 MR. BIANCAVILLA: Objection.

20 A No, sir.

21 THE COURT: Sustained.

22 When I sustain the objection, don't answer.

23 THE WITNESS: Okay.

24 Q Police Officer, you testified that you -- may we
25 have that exhibit?

People - P.O. Stark - Cross

1 THE COURT: Of course. Do you want the
2 officer to step into the well?

3 MR. CHAMBERLAIN: Please.

4 THE COURT: Please step into the well.

5 Q First of all, the stairs up to that hallway are
6 not shown to scale, are they?

7 MR. BIANCAVILLA: Objection.

8 THE COURT: What are you referring to?

9 MR. CHAMBERLAIN: The stairs leading to the
10 hallway.

11 THE COURT: Not the photographs but the
12 diagram?

13 MR. BIANCAVILLA: Objection. How would she
14 know?

15 THE COURT: Well, if she does, she can answer
16 it.

17 MR. CHAMBERLAIN: I assume she went up.

18 THE COURT: Excuse me?

19 MR. CHAMBERLAIN: I object to the comments.

20 THE COURT: I don't want comments from
21 anybody. No colloquy. We went through this before.

22 MR. BIANCAVILLA: Judge, the diagram is in
23 evidence.

24 THE COURT: Excuse me. Officer, do you know
25 if that diagram is to scale?

People - P.O. Stark - Cross

1 THE WITNESS: No, I don't.

2 Q Did you go up the stairs from the outside exit to
3 the hallway shown in that diagram?

4 A Yes.

5 Q Do you recall how many stairs there were?

6 A More than four.

7 Q More than four?

8 A I didn't count.

9 Q Is there a photograph of the stairs there?

10 A 15.

11 Q 15, does that accurately represent the stairs?

12 A As far as I know, sir.

13 Q And the hallway, would you describe the width of
14 the hallway, the width?

15 A Narrow is the best I can describe it, narrow.

16 Q Would there be room in that hallway for two people
17 to walk together down that hallway?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: I'll permit it.

20 A How large are the people? I mean, I wouldn't
21 know, sir.

22 Q Let's say your size, Officer?

23 A Width, I --

24 MR. BIANCAVILLA: Judge, I object. It calls
25 for speculation.

People - P.O. Stark - Cross

1 A I wouldn't know.

2 THE COURT: If you don't know, Officer, I
3 don't want you to speculate.

4 THE WITNESS: I don't know.

5 Q Officer, when you walked out on the roof, that was
6 through an exit in the hallway; is that correct?

7 A Yes.

8 Q Was there any window looking into the kitchen
9 through the roof?

10 A Yes.

11 Q Would you point to what side of the roof that was
12 from?

13 A Right here.

14 Q This diagram does not show the portion of the roof
15 you were walking on but I take it from your testimony that
16 there was a continuation of a flat roof to the position
17 where you viewed the kitchen; is that right?

18 A Yes.

19 Q Did you also walk further to view the bedroom?

20 A Yes.

21 Q Thereafter did you walk further to view the living
22 room?

23 A There were no windows in the living room.

24 Q No windows.

25 Officer, before you left, did the people from

People - P.O. Stark - Cross

1 Crime Scene come down to the apartment?

2 A I didn't leave the location until 0350 hours in
3 the morning. I can't tell you who, Crime Scene, Homicide,
4 everybody.

5 Q I take it during that period of time they were
6 conducting an investigation of the crime scene; is that
7 right?

8 A To my knowledge, yes.

9 Q Directing your attention, Officer, to October 17th
10 when you were called to 25 Elizabeth Street --

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Sustained.

13 MR. BIANCAVILLA: May the officer be seated,
14 Judge?

15 THE COURT: Of course.

16 THE WITNESS: Thank you.

17 THE COURT: Wrong date.

18 MR. CHAMBERLAIN: October 17th.

19 MR. BIANCAVILLA: Objection.

20 THE COURT: Sustained.

21 Q What date were you called to 25 Elizabeth?

22 A Excuse me?

23 Q What date did you go down to 25 Elizabeth Street?

24 A October 18th.

25 Q October 18th. Thank you.

People - P.O. Stark - Cross

1 Directing your attention to October 18th, did
2 Mr. Scrimo tell you anything else about the -- the crime --
3 the crime that you have described here?

4 MR. BIANCAVILLA: Objection, and I'll ask to
5 approach, Judge.

6 THE COURT: Come forward.

7 Step out, officer.

8 (Whereupon, the following took place at the
9 bench outside of the hearing of the jurors and
10 defendant.)

11 THE COURT: Mr. Chamberlain, if you are
12 attempting to elicit self-serving statements of your
13 client, I will not permit that

14 MR. CHAMBERLAIN: I'm attempting to elicit --

15 THE COURT: Tell me what you want to ask.

16 MR. CHAMBERLAIN: What -- the issue is.

17 COURT OFFICER: Excuse me. One of the jurors
18 needs to take a break.

19 THE COURT: All right. We'll take a break.

20 (Whereupon, the following took place in open
21 court.)

22 Do not discuss the case amongst yourselves or
23 with anyone else. Keep an open mind. Do not form or
24 express any opinions until the entire case has been
25 completed.

People - P.O. Stark - Cross

1 Do not read or listen to any accounts of the
2 case should they be reported in the media. Do not
3 visit or view any place or premises that have been
4 mentioned.

5 You are not to permit any party to discuss
6 the case with you or attempt to influence you, and you
7 must promptly report to the Court any violation
8 thereof.

9 (Whereupon, the sworn jurors exited the
10 courtroom.)

11 THE COURT: Mr. Chamberlain?

12 MR. CHAMBERLAIN: Yes, Judge.

13 THE COURT: Do you want to continue your
14 application?

15 MR. CHAMBERLAIN: Certainly, your Honor. The
16 portions already elicited concerning what the reasons,
17 in the suspect's, at that point, mind, or defendant's
18 mind, as to why he didn't do or say certain things are
19 only explainable by other things he told her in this
20 statement even though they may be self-serving.

21 I don't think the People should be allowed to
22 pick and choose portions of a statement that reflect
23 what was in the defendant's mind without the defense
24 being allowed to introduce statements that would make
25 that more explainable.

People - P.O. Stark - Cross

1 THE COURT: Mr. Biancavilla?

2 MR. BIANCAVILLA: Judge, the People have only
3 introduced those portions of these five pages of
4 statement that are an exception to the hearsay rule.
5 All the other portions of this statement are clearly
6 hearsay because they are clearly self-serving,
7 therefore, they are not an exception to the hearsay
8 rule. We are only seeking to admit the portion of the
9 statement --

10 MR. CHAMBERLAIN: I would like an offer of
11 proof as to how they are admissions or exceptions to
12 the hearsay rule.

13 MR. BIANCAVILLA: I can give Mr. Chamberlain
14 Richardson.

15 THE COURT: We have passed that point. The
16 jury has heard it. You didn't ask for an offer of
17 proof before. I ruled on it prior to Officer Stark
18 taking the stand.

19 MR. CHAMBERLAIN: I did ask, Judge, and the
20 Court ruled. But the point is --

21 THE COURT: First of all, Mr. Chamberlain,
22 you knew exactly what the People were going to elicit
23 with respect to testimony because we had this
24 discussion on the record at a quarter to 5:00
25 yesterday.

People - P.O. Stark - Cross

1 MR. CHAMBERLAIN: No question, Judge, and I
2 knew this morning when we discussed it a little
3 earlier. The point is that your Honor said,
4 notwithstanding my objection, you were going to let him
5 elicit this. I did object.

6 THE COURT: And I overruled.

7 MR. CHAMBERLAIN: At that point you said --
8 that's correct, Judge, and at that point you said that
9 I could offer -- try to offer other statements.

10 THE COURT: And I said that but, as I said
11 before on the record, I will not let you attempt to
12 introduce self-serving statements of your client
13 through this witness.

14 MR. CHAMBERLAIN: There are other statements
15 as to the operation of my client's mind. My point is,
16 having brought out what was in my client's mind, I
17 think it can only be explained by other statements and
18 I think I should be allowed to use those statements.

19 THE COURT: Anything further,
20 Mr. Biancavilla?

21 MR. BIANCAVILLA: Rely on our prior
22 conferences on this issue, Judge.

23 THE COURT: Mr. Chamberlain, your objection
24 is overruled.

25 MR. CHAMBERLAIN: I believe it was my

People - P.O. Stark - Cross

1 objection.

2 MR. BIANCAVILLA: You are right.

3 THE COURT: Sustained.

4 MR. BIANCAVILLA: Thank you.

5 (Whereupon, a brief recess was taken.)

6 COURT OFFICER: Jury entering.

7 (Whereupon, the sworn jurors entered the
8 courtroom and resumed their respective seats.)

9 THE COURT: Please have Police Officer Stark
10 come back in, please.

11 (Whereupon, the witness resumed the witness
12 stand.)

13 THE COURT: Mr. Chamberlain?

14 MR. CHAMBERLAIN: Thank you.

15 CONTINUED CROSS

16 BY MR. CHAMBERLAIN:

17 Q Officer Stark, you indicated that during the
18 course of this conversation on October 18th, 2000,
19 Mr. Scrimo told you about certain things that went on in a
20 bar called Y.L. Childs, do you remember that?

21 A Yes.

22 Q Did you tell this jury that he then told you that
23 Kane himself and Ruth, the victim, walked out together?

24 A No.

25 Q You didn't tell them that?

People - P.O. Stark - Cross

1 A No.

2 Q All right. Between the time that you found the
3 body on Thursday, October 13th -- I'm sorry, April 13th,
4 2000 and October 18th of 2000, did you have anything else to
5 do with this case?

6 A I believe I went to the grand jury.

7 Q Your grand jury testimony solely concerned what
8 happened when you found the body; is that right?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: Sustained.

11 Q Do you recall the date you went to the grand jury?

12 MR. BIANCAVILLA: Objection. Relevancy.

13 THE COURT: Yes, I don't see the relevancy.

14 Q Well, the grand jury testimony preceded the
15 October 18th visit?

16 MR. BIANCAVILLA: Objection. Relevancy.

17 THE COURT: I'll permit that.

18 A Could you just re-ask the question?

19 Q Do you recall when you testified before the grand
20 jury?

21 A Not the exact date.

22 Q Was it July of 2000?

23 A I'm not sure but it was before October 18th.

24 Q Other than testifying before the grand jury, did
25 you have anything else to do with this case?

People - P.O. Stark - Cross

1 A I believe I conferenced with the DA's office prior
2 to the grand jury.

3 Q Other than that, Officer Stark?

4 A With regard to?

5 Q Did you take any part in the investigation of this
6 case?

7 A No.

8 Q Did you speak to any of the witnesses?

9 A No.

10 Q Now, you've testified as to what Mr. Scrimo told
11 you his reasons were for not saying certain things. Without
12 telling me what they were, did he also tell you other --
13 also tell you other things he was thinking about this case?

14 MR. BIANCAVILLA: Objection.

15 THE COURT: Sustained.

16 Q Was there more information that he imparted to you
17 about this case?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: Sustained.

20 Q Was there any discussion between you and
21 Mr. Scrimo about Mr. Kane and Mr. Kane's --

22 MR. BIANCAVILLA: Objection, Judge.

23 THE COURT: Would you read that back to me
24 please?

25 (Whereupon, the court reporter read back the

People - P.O. Stark - Cross

requested question.)

THE COURT: Sustained.

Q Was there any further discussion between you and
Mr. Scrimo about Mr. John Kane?

MR. BIANCAVILLA: Objection.

THE COURT: Sustained.

MR. CHAMBERLAIN: Nothing further. Thank
you, Judge.

THE COURT: Anything further,
Mr. Biancavilla?

MR. BIANCAVILLA: No, Judge.

THE COURT: You may step down, Officer.

THE WITNESS: Thank you.

(Whereupon, the witness was excused from the
witness stand.)

THE COURT: Counsel, come forward, please.

(Whereupon, off-the-record discussion took
place at the bench outside of the hearing of the
jurors and defendant.)

(Whereupon, the following occurred in open
court.)

THE COURT: Call your next witness, please,
Mr. Biancavilla.

MR. BIANCAVILLA: John Kane.

MR. CHAMBERLAIN: Judge --

Proceedings

1 THE COURT: I don't want this in front of the
2 jury. If you want to make a record, come forward,
3 please.

4 (Whereupon, the following took place at the
5 bench outside of the hearing of the jurors and the
6 defendant.)

7 THE COURT: Mr. Biancavilla, you gave
8 Mr. Chamberlain a list of witnesses that you intended
9 to call today. Do you still intend to call those
10 witnesses?

11 MR. BIANCAVILLA: No.

12 THE COURT: This is your last witness?

13 MR. BIANCAVILLA: Yes, sir.

14 MR. CHAMBERLAIN: There are police officers
15 outside.

16 THE COURT: I'm not telling the People how to
17 present their case. I would be very upset if he
18 intends to call a witness after Mr. Kane.

19 MR. BIANCAVILLA: No. No.

20 MR. CHAMBERLAIN: I also noticed Newsday was
21 outside and they were called and told Kane would be
22 here this morning.

23 MR. BIANCAVILLA: Nobody told anybody
24 anything. I have a witness in the hallway. May we
25 move on?

Proceedings

1 MR. CHAMBERLAIN: If Newsday is called --

2 THE COURT: Mr. Biancavilla?

3 MR. BIANCAVILLA: No, I did not. Let's move
4 on please.

5 MR. CHAMBERLAIN: He didn't but his office
6 did.

7 THE COURT: Mr. Chamberlain, Newsday has been
8 in this courtroom many of the days of this trial.

9 MR. CHAMBERLAIN: That's fine.

10 MR. BIANCAVILLA: Can we move on?

11 THE COURT: Let's proceed.

12 MR. CHAMBERLAIN: I may need a little time to
13 review notes.

14 THE COURT: If you want to break after
15 direct, I have no problem with that. Matter of fact,
16 what I will do is break for lunch. Do you think we
17 will finish direct before lunch?

18 MR. BIANCAVILLA: Sure.

19 THE COURT: We'll break and give you over
20 lunch to review whatever notes you want.

21 MR. CHAMBERLAIN: Fine.

22 (Whereupon, the following took place in open
23 court.)

24

25

Proceedings

1 J O H N K A N E, a witness called on behalf of the People,
2 having been duly sworn, testified as follows:

3 COURT OFFICER: In a loud voice, give your
4 full name, spelling your last name.

5 THE WITNESS: John Kane, K-A-N-E.

6 COURT OFFICER: And your county of residence?

7 THE WITNESS: Suffolk County.

8 COURT OFFICER: Thank you.

9 THE COURT: You may inquire.

10 MR. BIANCAVILLA: Thank you, Judge.

11 DIRECT EXAMINATION

12 BY MR. BIANCAVILLA:

13 Q Good morning, Mr. Kane?

14 A Good morning.

15 Q Mr. Kane, will you tell the jury how old you are?

16 A Thirty-two.

17 Q Are you currently employed?

18 A Yes, I am.

19 Q What type of work do you do?

20 A I do floors for a living.

21 Q When you say you do floors, will you explain that?

22 A Carpet and oak floors, tile.

23 Q How long have you been doing that?

24 A On and off for about ten years.

25 MR. CHAMBERLAIN: I'm having difficulty

People - Kane - Direct

1 hearing.

2 THE COURT: Move nearer to the microphone and
3 keep your voice up.

4 THE WITNESS: All right.

5 Q In April of 2000, did you belong to a dart team?

6 A Yes.

7 Q Where was the dart team?

8 A Falcons' Nest in Farmingdale.

9 Q What is the Falcons' Nest in Farmingdale?

10 A It's a bar.

11 Q Do you know the defendant in this case,
12 Paul Scrimo?

13 A Yes.

14 Q How long had you known Paul Scrimo in April of
15 2000?

16 A About a year.

17 Q How did you know him?

18 A From the dart team at Falcons' Nest.

19 Q On what nights did you play darts?

20 A On Tuesday night.

21 Q Was it a regular dart game every Tuesday night?

22 A Yes.

23 Q I am going to direct your attention to Tuesday,
24 April 11th of 2000. Do you remember that night?

25 A Yes.

People - Kane - Direct

1 Q Where were you at approximately eight o'clock that
2 night?

3 A I went down to the Falcon's Nest to play darts.

4 Q Who was at the Falcon's Nest when you went down
5 there on Tuesday, April 11th.

6 A The dart team and Paul Scrimo is on the dart team.

7 Q Can you describe how Paul Scrimo appeared, his
8 appearance on the evening of April 11th, 2000?

9 A He had just recently shaved his head.

10 Q What did you do Tuesday night from eight o'clock
11 on?

12 A We played darts at the Falcon's Nest.

13 Q Was there a competition?

14 A Yes.

15 Q Was Mr. Scrimo with you the entire time?

16 A Yes.

17 Q What time was the dart tournament over?

18 A At twelve o'clock.

19 Q Were you drinking alcohol while you were playing
20 darts?

21 A Yes.

22 Q What did you drink that night?

23 A Absolute, 7-Up and OJ.

24 Q How about Mr. Scrimo?

25 A Guinness.

People - Kane - Direct

1 Q What time was the dart tournament over?

2 A At twelve o'clock.

3 Q Where did you go after the dart tournament?

4 A Me and Paul went out drinking. We went to Granny
5 O'Shea's.

6 Q Where was that located?

7 A On Main Street in Farmingdale.

8 Q Did you and Mr. Scrimo go together?

9 A Yes.

10 Q How did you get there?

11 A We walked. It's not far from the Falcon's Nest
12 bar.

13 Q What happened when you got to Granny O'Shea's?

14 A I introduced Paul to the bartender, Penny, and we
15 had a drink.

16 Q Approximately how long did you stay at Granny's?

17 A Forty-five minutes.

18 Q What time did you leave Granny's, if you remember?

19 A It was one o'clock.

20 Q Now, we are talking about into the morning of
21 Wednesday, April 12th?

22 A Right.

23 Q When you left Granny's, where did you go?

24 A We went down Main Street to Conklin over to Y.L.
25 Childs bar.

People - Kane - Direct

1 Q When you got to Y.L. Childs bar, what did you do?

2 A We went in, went to the bar, got a couple of
3 stools and hung out and started drinking.

4 MR. CHAMBERLAIN: I didn't hear that.

5 THE COURT: Repeat your answer, please.

6 A We went into the bar, went to the right-hand side
7 of the bar, grabbed a couple of stools and started drinking.

8 Q Did you know anybody in the bar? Did you
9 personally know anybody in the bar?

10 A Ruthy came over to us after a while, yes.

11 Q Where did you know Ruthy from?

12 A I knew her from the Falcons Nest.

13 Q How long had you known her?

14 A About two years.

15 Q You're referring to Ruth Williams?

16 A Yes.

17 Q So we are at the point where Ruthy came over to
18 you. Tell the jury what happened?

19 A Then we were hanging out, you know, drinking and
20 just talking and she was dancing. She was flirting with me.
21 I made out with her and at this time Paul was like what
22 about me. You know, she was like, oh, you're married, like
23 that.

24 Q Did you stay at the bar the whole time?

25 A No, like, you know, floated around, went to the

People - Kane - Direct

1 bathroom, you know, over to the pool tables, whatever.

2 Q So you weren't at the bar the whole time?

3 A Not sitting at the bar the entire time, no.

4 Q How long would you say you were at Y.L. Childs
5 with Mr. Scrimo?

6 A Approximately three hours, until closing, until
7 last call.

8 Q What about Ruth?

9 A Ruth left early in the evening. I'm not sure at
10 what point she left.

11 Q You left Y.L. Childs at closing?

12 A Yes, at the last call.

13 Q That was approximately what time?

14 A Quarter to 4:00.

15 Q And Ruthy had left before you?

16 A Yes.

17 Q When you left Y.L. Childs, what you did and
18 Mr. Scrimo do?

19 A Then we walked down Main Street back toward the
20 Falcon's Nest.

21 Q Did you have a conversation?

22 A Yes, we were talking and I said, Why don't we go
23 over to Ruth's and have a drink?

24 Q Had you been to Ruth's before?

25 A Yes.

People - Kane - Direct

1 Q Approximately how many times before?

2 A Five, five times maybe.

3 Q How long have you known Ruth for?

4 MR. CHAMBERLAIN: I didn't hear the last
5 answer.

6 THE COURT: Five times I have been to
7 Ruthy's?

8 A I have known her for two years.

9 Q So you had a conversation -- I'm sorry, what was
10 that conversation?

11 A Yeah, I said, Let's go over to Ruthy's and have a
12 drink.

13 Q Then what did you do?

14 A He said, Okay, and we went over to Ruthy's behind
15 the Falcon's Nest Bar.

16 Q Describe what happened?

17 A I went in the first door up the stairs and then
18 down the hallway and I knocked on the door. Ruthy answered
19 and we went in. I asked her if she had any beers. She said
20 no. Scrimo said, I'll go to 7-Eleven and get beers. And
21 Ruthy told him, you know, get me a pack of smokes.

22 MR. CHAMBERLAIN: I didn't hear the last
23 word.

24 THE COURT: Pack of smokes.

25 Q What happened then?

People - Kane - Direct

1 A He left.

2 Q What did you do?

3 A I was sitting at the table, at the kitchen table,
4 and me and Ruthy engaged in oral sex.

5 Q Describe that for the jury please, what happened?

6 A Well, she sat between my legs and gave me oral
7 sex.

8 Q Now, describe how she was touching you at the
9 time?

10 A Running her finger through my hair, grabbing me,
11 you know, stroking my behind.

12 Q What happened then?

13 A Then I had asked her to stop because I knew Scrimo
14 would be coming back soon.

15 Q Then what happened?

16 A So she stopped and I got up, zipped myself, and I
17 told her I was going to put on some tunes.

18 MR. CHAMBERLAIN: Judge, I have a problem
19 with this witness because he drops the ends of words.
20 I'm missing a lot of this.

21 THE COURT: Read back the last answer for
22 Mr. Chamberlain, please.

23 (Whereupon, the court reporter read back the
24 requested testimony.)

25 THE COURT: Would you please keep your voice

People - Kane - Direct

1 up, Mr. Kane.

2 Maybe if we close the window.

3 MR. CHAMBERLAIN: It's not the window, Judge.

4 THE WITNESS: I'll try.

5 THE COURT: Tell me, Mr. Chamberlain, if you
6 don't hear something, but keep your voice up as much as
7 you can.

8 THE WITNESS: All right.

9 Q You left off with you said you were putting on
10 tunes.

11 A Yes.

12 Q What did you do?

13 A I got up from the kitchen table, went through the
14 bedroom into the living room over to the stereo and I went
15 through the CDs and found an Allman Brothers CD that I liked
16 and put that in.

17 MR. CHAMBERLAIN: I missed that.

18 MR. BIANCAVILLA: Judge, I can hear him
19 perfectly.

20 MR. CHAMBERLAIN: Maybe so, but I can't. I
21 object to that. I can't.

22 THE COURT: I don't want conversation. I'll
23 have the witness keep his voice up. If there's
24 something you can't hear, let me know and we'll have it
25 read back to you.

People - Kane - Direct

1 MR. CHAMBERLAIN: Please advise

2 Mr. Biancavilla not to make comments.

3 THE COURT: Both of you, I don't want
4 colloquy. Do we understand each other?

5 MR. BIANCAVILLA: Yes, Judge.

6 MR. CHAMBERLAIN: Yes.

7 THE COURT: Please keep your voice up,
8 Mr. Kane.

9 Go ahead, Mr. Biancavilla.

10 MR. CHAMBERLAIN: May we have the last answer
11 read back?

12 THE COURT: Please read it back.

13 (Whereupon, the requested answer was read
14 back by the court reporter.)

15 THE COURT: Okay.

16 Q After you put the Allman Brothers CD in, what did
17 you do?

18 A Then I went back through the bedroom into the
19 kitchen and Scrimo was back from the 7-Eleven with -- he had
20 a twelve pack of beers.

21 Q What happened at that point?

22 A Then we sat down. We had a beer. We were hanging
23 out. I was listening to the tunes and --

24 Q Where were you seated?

25 A I was sitting in the chair at the kitchen table by

People - Kane - Direct

1 the phone, nearest to the phone. Scrimo was sit -- seated
2 in the other seat closer to the doorway and Ruth was -- she
3 was kind of in between the refrigerator and stove, just kind
4 of hanging out, you know.

5 Q What was happening at that point?

6 A We was hanging out, you know, talking, having a
7 beer. I started vegging out to the music, listening to the
8 lyrics of the music, and Scrimo and Ruthy were talking and
9 they had -- Scrimo had gotten up and said that, you know,
10 I'm not going to take this. I'm out of here. Like that.

11 Q I'm sorry?

12 A He said, I'm not going to take this. I'm out of
13 here, and had gotten up and started walking down the hallway
14 to exit.

15 Q What did you do?

16 A I got up and went, you know, toward him. I was
17 like, What are you doing? We just got here. We just got
18 some beers. You know, hang out.

19 That's when Ruth said, Fuck it. Let him go home
20 to his fat ugly wife.

21 Q I didn't hear.

22 A Fuck him. Let him go home to his fat ugly wife.

23 Q What happened at that point?

24 A That's when Paul snapped. He turned and pushed me
25 aside and made an A line right to Ruthy.

People - Kane - Direct

1 Q Where was she standing when this happened?

2 A She was standing in the kitchen in the doorway to
3 the bedroom.

4 Q What happened?

5 A He went at her and he grabbed her, you know, both
6 hands by the shoulders, threw her down and she fell into the
7 bedroom by the bed.

8 Q And what happened?

9 A Then I came running up. I thought they were
10 getting into a fight.

11 MR. CHAMBERLAIN: I didn't hear that?

12 THE COURT: One second.

13 Read that back please.

14 (Whereupon, the court reporter read back the
15 requested answer.)

16 THE COURT: You may continue.

17 A And I came running up. I grabbed -- I grabbed
18 Scrimo by the shoulders. He was on top of her. I grabbed
19 him by the shoulders. He was like a rock. I was like, What
20 the fuck? What are you doing? And that's when I looked
21 over his shoulder and saw that he was strangling her.

22 Q Did you see her face?

23 A Yes.

24 Q What did you see about her face?

25 A Her eyes were rolled up in the back of her head

People - Kane - Direct

1 and her mouth was agape, her mouth was opened.

2 Q Then what happened?

3 A I grabbed on and said, What the fuck? I realized
4 he was killing her at this moment, you know, like, so I just
5 backed up and I started walking backwards, walking away
6 going, What the fuck? What are you doing? What the fuck?

7 Q What happened then?

8 A I backed up in the kitchen area and that's when
9 Scrimo had gotten up and he went to, like, my left, but in
10 the bedroom area. He was out of my sight, you know, just
11 real quick. I heard like a snapping, like something being
12 ripped out. All right. That's when Ruth was laying there.
13 She looked dead to me. He came back, came up behind her,
14 wrapped it around her neck and pulled up on it.

15 Q Could you describe for the jury how you saw him
16 pulling up on it?

17 A Describe --

18 Q Yes. Standing up.

19 A Wrapped it around her neck and yanked up on it
20 like this (demonstrating).

21 Q Did you see what he had in his hand?

22 A Excuse me?

23 Q Could you see what was in his hand?

24 A A cord of some sort. I'm not sure what it was.

25 Q What were you doing at that point?

People - Kane - Direct

1 A I was still in the kitchen backed up against the
2 counter and that's when he screamed at me. He said, Get the
3 fucking stereo, like that.

4 Q What did you do?

5 A I reluctantly went and stepped over Ruthy's legs
6 by Scrimo and went through the bedroom and in the living
7 room where the stereo was.

8 Q What did you do then?

9 A I frantically looked to see how to turn it off and
10 I shut it off, shut off the music.

11 Q What happened then?

12 A I came back through the bedroom and Paul was --
13 Paul wasn't there. He was in the kitchen wiping down like
14 the seats and like the table with a napkin.

15 Q What was he using, a napkin?

16 A A napkin and some sort of rag.

17 Q What did he do then?

18 A That's when he screamed at me, get The beers, Get
19 the fucking beers. So I grabbed the beers off the table and
20 put them in the case. I grabbed the case and started
21 walking down the hallway.

22 Q Where was he?

23 A He was -- he came right behind me.

24 Q What happened as you were walking down the
25 hallway?

People - Kane - Direct

1 A We went through the first doors and he wiped off
2 the handle. And when we went down the stairs, he wiped off
3 the handle to that door knob.

4 MR. CHAMBERLAIN: I didn't hear that.

5 THE COURT: Read the last response back,
6 please.

7 (Whereupon, the court reporter read back the
8 requested answer.)

9 THE COURT: You may continue.

10 A Then we left and we started going to the parking
11 lot and --

12 Q Which direction did you walk when you left the
13 apartment?

14 A West.

15 Q Where did you walk to?

16 A Towards the railroad tracks toward my home.

17 Q Did you have any conversation as you were walking?

18 A Yeah. While we were walking, Scrimo was saying to
19 me, You know, don't say nothing. It's all taken care of.

20 We are in this together. Just keep your mouth shut.

21 Q Where did you go at that point?

22 A I went up to my apartment.

23 Q When was the next time you saw Mr. Scrimo?

24 A I seen him the next Tuesday at darts.

25 Q Did you have a conversation at that time?

People - Kane - Direct

1 A Yeah, but not much of one. He just said to keep
2 your mouth shut, it's all taken care of.

3 Q When was the next time you saw him after that?

4 A I seen him the next Tuesday.

5 Q The following Tuesday night?

6 A Yeah, at darts again.

7 Q Did you have a conversation with him at that
8 point?

9 A Yeah. He said something about the cops were
10 looking for a black guy and that Ruthy was seen having an
11 argument with somebody by the Downtown.

12 Q Did you see him after that?

13 A I seen him after that time, no.

14 MR. BIANCAVILLA: Judge, may we have the
15 easel put up?

16 THE COURT: Yes.

17 MR. BIANCAVILLA: May we have People's 31
18 displayed for the jury?

19 THE COURT: Do you want him to step down?

20 MR. BIANCAVILLA: Yes.

21 THE COURT: Please step down.

22 Q Mr. Kane, I am going to ask you to take a look at
23 that picture and will you point to the jury the seat that
24 you were seated in by the telephone in the kitchen?

25 A It would be right here.

People - Kane - Direct

1 THE COURT: Which photograph?

2 Q Look at the number underneath the photograph.

3 A Eighteen. I was sitting in this seat right here.

4 Q Where was Mr. Scrimo?

5 MR. CHAMBERLAIN: The exhibit number please?

6 THE COURT: Eighteen.

7 A Scrimo was sitting at this seat with the jacket --
8 that has the jacket on it.

9 Q Now, look at the next photograph over. Do you see
10 this photograph?

11 A Yes.

12 Q Read the number off underneath of it.

13 A Twenty-one.

14 Q When you left the apartment that night, is that
15 the position of Ruth Williams?

16 A Yes.

17 Q Please describe for the jury how you saw
18 Mr. Scrimo putting the cord around Ruth Williams' neck,
19 where was he standing in that photograph?

20 A He was kind of sliding -- he was kind of squatting
21 behind her, kneeling like this behind her (demonstrating),
22 behind her on this side of her. This is where he came from
23 when he disappeared out of my sight. He came from that way.
24 He came back in this way. He came behind her like this and
25 wrapped it around her and lifted it up, the cord

People - Kane - Direct

1 (demonstrating).

2 Q When you were --

3 MR. CHAMBERLAIN: For the record, Judge,
4 indicating kneeling in what, like this?

5 THE WITNESS: Like this.

6 THE COURT: Yes, it looked like he was
7 squatting down.

8 THE WITNESS: Squatting down.

9 THE COURT: Yes, the record will reflect
10 that.

11 Q Demonstrate how you -- show the jury where you
12 went to shut the CD off?

13 A Through the kitchen area this way, the bedroom
14 into the living room down here. This is where the stereo
15 was.

16 Q Now, that photograph below that particular room
17 there, is that the stereo that you shut off?

18 A Yes.

19 Q Now, show the jury on People's Exhibit 31 the
20 approximate area in the kitchen where Ruth was standing when
21 Mr. Scrimo first attacked her?

22 A Thirty-one?

23 Q I'm sorry. The big exhibit is 31. Just go to the
24 photograph.

25 A This is the kitchen right here. Standing right

People - Kane - Direct

1 here. This is where the kitchen table is. And this is the
2 hallway and this is where Scrimo came from, like this.

3 MR. CHAMBERLAIN: May we have that spot
4 marked as the doorway between the kitchen and the
5 bedroom; is that correct?

6 MR. BIANCAVILLA: I believe that's what he
7 just testified to.

8 MR. CHAMBERLAIN: It's not on the record.

9 Q You are indicating?

10 A Between the kitchen area and the bedroom, that
11 doorway that leads from the kitchen area to the bedroom.

12 Q Now, when you left, please describe to the jury
13 how you left the apartment?

14 A We left down the hallway and then down the stairs.

15 Q Who exited the apartment first?

16 A I did.

17 Q Where was Mr. Scrimo when you exited the
18 apartment?

19 A He was behind me.

20 Q Thank you. You can be seated.

21 After you exited the apartment, where did you go?

22 A Excuse me?

23 Q Where did you go after you left the apartment?

24 A I went to my apartment.

25 Q But who were you with when you left?

People - Kane - Direct

1 A I was with Paul Scrimo.

2 Q And you had conversation as you were walking home?

3 A Yes, he said to me --

4 MR. CHAMBERLAIN: Asked and answered, Judge.

5 THE COURT: Overruled.

6 Q What did he say to you?

7 A He said to me, Don't worry about it. Everything
8 is taken care of. Just keep your mouth shut. We are in
9 this together.

10 Q When was the next time you saw him after that
11 night?

12 A The next Tuesday at darts.

13 Q What did he say to you?

14 A He said, Just keep your mouth shut. Everything is
15 taken care of.

16 Q And the last time you saw him?

17 A The last time I saw him was the following Tuesday
18 after that.

19 Q What did he say?

20 A He said, Don't worry about nothing. The cops are
21 looking for some black guy. She got into an argument
22 outside the downtown.

23 MR. BIANCAVILLA: Thank you. I have nothing
24 further of this witness.

25 A Counsel, come forward.

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1 THE COURT: Please step down.

2 Ladies and gentlemen, at this point we are
3 going to break for lunch. I am going to ask you to be
4 back here at 2:00 p.m.

5 Again, do not discuss the case amongst
6 yourselves or with anyone else. Keep an open mind. Do
7 not form or express any opinions until the entire case
8 has been completed.

9 Do not read or listen to any accounts of the
10 case should they be reported in the media. Do not
11 visit or view any place or premises that have been
12 mentioned.

13 You are not to permit any party to discuss
14 the case with you or attempt to influence you, and you
15 must promptly report to the Court any violation
16 thereof.

17 Have a nice lunch. We'll see you at two
18 o'clock.

19 (Whereupon, the sworn jurors exited the
20 courtroom.)

21 THE COURT: Mr. Kane, do not discuss your
22 testimony with anybody with respect to this case and
23 we'll see you at two o'clock. You are excused now.

24 Counsel, 2:00 p.m.

25 MR. BIANCAVILLA: Thank you, Judge.

Proceedings

1 (Whereupon, a luncheon recess was taken.)

2 A F T E R N O O N S E S S I O N

3 THE CLERK: Case on trial continued. All
4 parties are present. The jurors are not present at
5 this time.

6 Are the People ready to proceed?

7 MR. BIANCAVILLA: Yes.

8 THE CLERK: Defendant?

9 MR. CHAMBERLAIN: Defendant ready.

10 THE COURT: Counsel, before we bring in the
11 jury, Mr. Chamberlain, at this point, based on some of
12 the prior conversations that I had with both you and
13 Mr. Biancavilla with respect to potential
14 cross-examination of Mr. Kane, I am going to ask you to
15 place on the record your good faith basis for asking
16 certain questions at this point.

17 MR. CHAMBERLAIN: Judge, there are two
18 witnesses who testified previously before Judge Honorof
19 concerning prior drug purchases from Mr. Kane.

20 THE COURT: This was under oath,
21 Mr. Chamberlain?

22 MR. CHAMBERLAIN: Yes, it was.

23 There are other witnesses who also have
24 indicated that they purchased drugs from Mr. Kane. I
25 intend to question concerning those people.

Proceedings

1 THE COURT: Mr. Biancavilla?

2 MR. CHAMBERLAIN: I --

3 THE COURT: I'm sorry. I thought you were
4 finished. I want to make sure you're finished. I'll
5 give you an opportunity if Mr. Biancavilla says
6 something you want to reply to.

7 MR. CHAMBERLAIN: There may be a little
8 uncertainty as to some of the dates because many of
9 these people don't have exact dates.

10 THE COURT: In the record that was unsealed
11 that Judge Honorof unsealed, was there any date within
12 that record?

13 MR. CHAMBERLAIN: My understanding --

14 MR. BIANCAVILLA: Judge, I believe it was
15 1998. I think this was one incident.

16 THE COURT: A month and a year, right.

17 MR. BIANCAVILLA: A witness by the name of
18 Charles Ball, I believe his last name was, and he said
19 it was one incident involving the sale of a half a gram
20 of Kane that he claims Mr. Kane made to him and that
21 was some two years prior --

22 THE COURT: It says here early August of 1998
23 Mr. Ball testified before Judge Honorof.

24 MR. BIANCAVILLA: That was the date of the
25 incident?

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1 THE COURT: Yes.

2 MR. BIANCAVILLA: And from what I understand,
3 that was the only one Judge Honorof heard.

4 THE COURT: That's the one I am aware of.
5 That's why I am asking Mr. Chamberlain if there were
6 others.

7 MR. CHAMBERLAIN: There were others, Judge.
8 Let me see if I can find it.

9 THE COURT: Certainly. Take your time.

10 MR. CHAMBERLAIN: Early August, 1998, Judge.

11 THE COURT: That was in the transcript before
12 Judge Honorof on December 27th, 2000; is that correct,
13 Mr. Chamberlain?

14 MR. CHAMBERLAIN: That's correct. There was
15 another witness who testified before Justice Honorof,
16 Judge Honorof at or about same time, to my knowledge.

17 MR. BIANCAVILLA: Not according to Judge
18 Honorof.

19 THE COURT: The only transcript I have before
20 me is --

21 MR. CHAMBERLAIN: That's not correct. There
22 may not be a transcript but Judge Honorof indicated
23 there are two witnesses.

24 THE COURT: He may or may not be mistaken.
25 Judge Honorof, as you both are aware, unsealed the

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1 record. The only record I have is December 27th, 2000.
2 There was only one witness who testified and that was
3 Mr. Charles Ball who testified in this transcript about
4 a sale, a half of a gram of cocaine for \$50 in early
5 August of 1998 at the Falcon's Nest bar.

6 MR. CHAMBERLAIN: But there was another
7 witness who testified, Judge.

8 THE COURT: That maybe, Mr. Chamberlain
9 that's why, as you are aware, the law says all
10 witnesses may be cross-examined about any immoral,
11 vicious or criminal acts which may reflect on their own
12 character and show them to be unworthy of belief,
13 provided the cross-examiner's questions are in good
14 faith and based upon a reasonable basis in fact.

15 Now, you've given me a reasonable fact basis
16 as to Ball.

17 MR. BIANCAVILLA: May --

18 THE COURT: I'll hear you in a minute.

19 I'm asking if you are aware of any others. I
20 don't want counsel to continually come up to the bench
21 during cross-examination.

22 MR. CHAMBERLAIN: I understand, Judge.

23 Penny Shouse who testified here indicated she
24 had a problem testifying in response to purchasing
25 drugs in the past.

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1 MR. BIANCAVILLA: No, she didn't.

2 MR. CHAMBERLAIN: Yes, she did.

3 THE COURT: Mr. Biancavilla, let me hear from
4 Mr. Chamberlain, please.

5 MR. BIANCAVILLA: I'm sorry.

6 MR. CHAMBERLAIN: She indicated she got an
7 attorney an his first response, after talking to her at
8 length, was she should claim her fifth amendment rights
9 to not testify about prior drug use.

10 MR. BIANCAVILLA: That's not true.

11 MR. CHAMBERLAIN: It is true.

12 MR. BIANCAVILLA: It's not true.

13 THE COURT: Mr. Biancavilla?

14 MR. BIANCAVILLA: With respect to the
15 incident, Charles Ball, the People submit, anything
16 occurring in August 1998 is much too remote in time
17 regarding this particular incident which happened two
18 years later.

19 I will refer to a case which is -- I'm going
20 to refer to a series of cases in my application, Judge,
21 so the Court is aware of the authority from which I am
22 speaking but, clearly, in People versus Barnhill, and
23 that is 188 AD2d 884, the court clearly set forth that
24 whatever cross-examination occurs has to be relevant
25 and if it's too remote in time, then it's not relevant.

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1 THE COURT: How many years was it that in
2 that case?

3 MR. BIANCAVILLA: I am getting into that now.
4 Judge, with respect to Barnhill, the facts were that
5 none of the testimony offered constituted permissible
6 extrinsic evidence of Dow's and Chambers' bias,
7 hostility or interest. The evidence of Dow's and
8 Chambers' consumption of cocaine was unspecified as to
9 dates, except as to one brief period of Dow's use
10 months after the crime were committed. All of such
11 evidence either lacked probative value or was
12 completely insufficient to show that Dow and Chambers
13 were under the influence of drugs while testifying, or
14 at the time of the events to which they testified, or
15 that their power of perception or recollection were
16 actually impaired by the drug addiction.

17 The court went on to say the only function of
18 the evidence that the defendant sought to introduce of
19 Chambers' and Dow's use of cocaine and promotion of
20 prostitution was to attack their credibility by showing
21 their vicious, immoral or criminal acts. This kind of
22 impeachment, however, is limited to cross-examination
23 and may not be established by extrinsic evidence.

24 My point is two things. The extrinsic
25 evidence he wants to introduce after this witness

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1 testifies --

2 THE COURT: I'm only dealing with
3 cross-examination.

4 MR. BIANCAVILLA: I understand that, but what
5 I am saying is that two years prior to this homicide,
6 Judge, I am arguing, is clearly much too remote in
7 time. If he had done this six months prior to the
8 homicide, then I wouldn't get up here and argue that it
9 was irrelevant.

10 When we are talking about an individual
11 coming in here and testifying that two years prior to
12 this criminal act occurring, that he may or may not
13 have purchased a half a gram of cocaine from John Kane,
14 it is irrelevant because it's too remote and he's
15 talking about August 1998, Judge. This homicide
16 happened in April of 2000. That's my argument with
17 respect to Mr. Ball's testimony.

18 With respect to anyone else's testimony,
19 Mr. Chamberlain cannot come in here and point his
20 finger at John Kane and call him a drug dealer. He can
21 ask him on specific dates and times, did you sell drugs
22 to X, Y and Z, but he can't just generalize without any
23 specific facts.

24 My point, with respect to Mr. Ball, is he
25 isn't coming in and saying in August of 1998 did he

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1 sell cocaine to Charles Ball, because in August of 1998
2 is two years before this homicide.

3 MR. CHAMBERLAIN: Judge, I would disagree
4 with that statement of law but I have another witness
5 by the name of Jennifer Hartman who purchased drugs
6 from Mr. Kane.

7 THE COURT: What is your good faith basis for
8 that, Mr. Chamberlain?

9 MR. CHAMBERLAIN: This witness would testify
10 that she purchased drugs, he cut the drugs, they were
11 bagged, and she grabbed, \$30, I believe it was a bag --

12 THE COURT: My question is your good faith
13 basis, something in fact. Do you have a statement from
14 her? Someone spoke to her?

15 MR. CHAMBERLAIN: I have a statement from
16 her, not in writing, but I have a statement through an
17 investigator.

18 MR. BIANCAVILLA: When did that happen,
19 Judge? Two years or two weeks before the murder?
20 That's my point.

21 MR. CHAMBERLAIN: The point of this is that
22 this witness not only claims she purchased drugs but
23 that the drugs were cut and when she tried to take some
24 of her money back from a hundred dollars in change he
25 had in the bar in the Falcon's Nest, he started to

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1 choke her.

2 MR. BIANCAVILLA: That doesn't answer my
3 question. When did that happen?

4 THE COURT: Let me get the date,
5 Mr. Chamberlain.

6 MR. CHAMBERLAIN: I think 1997.

7 MR. BIANCAVILLA: Again, it's too remote in
8 time.

9 THE COURT: Mr. Biancavilla, I disagree with
10 you.

11 MR. BIANCAVILLA: 1997, Judge?

12 THE COURT: The cases you cited are easily
13 distinguished because, first of all, it was after the
14 event, not before the event; and, second of all, it
15 was, in that case, it was equivocal as to the date.
16 They weren't specific as to the date. In this
17 situation we have a date certain and we have testimony
18 under oath from Mr. Ball.

19 Now, with respect to -- what was the other
20 witness' name.

21 MR. CHAMBERLAIN: Jennifer Hartman.

22 THE COURT: Jennifer Hartman, the good faith
23 basis, Mr. Chamberlain has placed on the record, I
24 would permit Mr. Chamberlain to cross-examine the
25 witness with respect to that alleged act.

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1 MR. CHAMBERLAIN: With respect to the witness
2 from whom we don't have a transcript but did testify,
3 from my knowledge, before Judge Honorof in the bail
4 hearing --

5 THE COURT: Were you present when this
6 witness testified?

7 MR. CHAMBERLAIN: No, I wasn't present when
8 she went in.

9 THE COURT: Did you speak to her?

10 MR. CHAMBERLAIN: She was in jail and brought
11 into court. I didn't speak to her beforehand. I spoke
12 to her for a brief moment after she came out of court.
13 Her testimony was multiple purchases from Mr. Kane
14 including purchases just prior to the murder at which
15 time she shared cocaine purchased from Mr. Kane with
16 the victim.

17 THE COURT: Did you actually speak to the
18 witness about this?

19 MR. CHAMBERLAIN: Yes, I have, Judge.

20 THE COURT: And she gave you that
21 information?

22 MR. CHAMBERLAIN: She did, Judge.

23 THE COURT: There's a good faith basis.

24 MR. CHAMBERLAIN: And this happened to be the
25 witness -- withdrawn.

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1 THE COURT: I will permit you to
2 cross-examine with respect to that witness too. Place
3 that reporter name on the record.

4 MR. CHAMBERLAIN: Stephanie Domaradzki.

5 MR. BIANCAVILLA: This is a witness that
6 Mr. Chamberlain is claiming testified before Judge
7 Honorof and Judge Honorof didn't have a reporter
8 present?

9 THE COURT: I have no idea.

10 MR. BIANCAVILLA: Judge Honorof appeared here
11 the other day and said the only witness that had
12 appeared before him he had a transcript for.

13 THE COURT: Mr. Chamberlain is an officer of
14 the court.

15 MR. BIANCAVILLA: I understand but I don't
16 understand why Judge Honorof would conduct a proceeding
17 in his courtroom without a court reporter, which we saw
18 with Ball.

19 THE COURT: There has been no record
20 provided.

21 MR. BIANCAVILLA: I believe there's been an
22 exhaustive search, Judge. If you want to allow him to
23 cross-examine with respect to that, I take exception to
24 the ruling of the court.

25 MR. CHAMBERLAIN: This witness -- Judge

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1 Honorof didn't state here there was only one witness.

2 THE COURT: Mr. Chamberlain, we don't have to
3 hear argument on this. I have already granted your
4 application.

5 MR. CHAMBERLAIN: Okay.

6 THE COURT: I have a question for
7 Mr. Biancavilla.

8 MR. BIANCAVILLA: Yes?

9 THE COURT: For the record, do I need to
10 appoint an attorney for Mr. Kane.

11 MR. BIANCAVILLA: No, Judge. Mr. Kane had an
12 attorney in the initial portions of this proceeding.
13 He appeared with an attorney and the attorney told him
14 that it wasn't necessary for him to be represented any
15 longer.

16 THE COURT: To your knowledge, do you know if
17 Mr. Kane is taking the fifth amendment?

18 MR. BIANCAVILLA: He is not, Judge.

19 THE COURT: Are we read to proceed? Counsel,
20 anything further?

21 MR. CHAMBERLAIN: Yes, Judge. We have a
22 question regarding immunity.

23 MR. BIANCAVILLA: He can ask Mr. Kane
24 anything he would like. I wasn't involved in this case
25 in the beginning. He had extensive conferences with

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1 Assistant District Attorney Dempsey who handled the
2 case for the first two years. He can ask Mr. Kane
3 anything he would like about what representations were
4 made to him by the district attorney's office, you
5 know, whether or not he appeared with an attorney, what
6 happened to his attorney. I have no problem with any
7 of that cross-examination.

8 MR. CHAMBERLAIN: None of that was revealed
9 to me, Judge, none of those have been revealed and it's
10 incumbent upon him not to have me ask a witness on the
11 stand who is a layman what arrangements were made with
12 respect to --

13 MR. BIANCAVILLA: There wasn't --

14 MR. CHAMBERLAIN: I would like to --

15 THE COURT: Excuse me. Mr. Biancavilla is an
16 officer of the court and he just told you there were no
17 arrangements.

18 MR. CHAMBERLAIN: Judge, he told me a minute
19 ago I should ask Mr. Dempsey, that he doesn't know what
20 was done.

21 What I am saying is, if he was given
22 immunity, I should be told by the district attorney and
23 I should be told whether Mr. Kane had an attorney and
24 who that was and what the arrangements were for giving
25 him that immunity. I should have been told that.

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1 THE COURT: Mr. Biancavilla?

2 MR. BIANCAVILLA: Mr. Kane was not given any
3 immunity for anything. He appeared on one occasion,
4 from what I understand, with an attorney and that was
5 it.

6 MR. CHAMBERLAIN: When was that?

7 MR. BIANCAVILLA: When the case first
8 occurred. That was back in 2000.

9 MR. CHAMBERLAIN: But Judge, did this man
10 testify before the grand jury?

11 MR. BIANCAVILLA: Mr. Chamberlain, I'm not
12 here to answer your questions.

13 THE COURT: Are you talking about the
14 attorney? What are you talking about?

15 MR. CHAMBERLAIN: I am talking about
16 Mr. Kane.

17 MR. BIANCAVILLA: He knows Kane testified in
18 the grand jury.

19 THE COURT: You have Rosario material, I
20 presume.

21 MR. CHAMBERLAIN: Judge, I don't have any
22 Rosario material -- I really find it offensive to be
23 interrupted with words like geez and I think that's
24 improper here, Judge.

25 THE COURT: I want you both to treat each

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1 other like the professionals that you are.

2 MR. CHAMBERLAIN: I would appreciate that.

3 Judge, I think I'm entitled to find out under
4 what circumstances Mr. Kane testified before the grand
5 jury. Was he given immunity?

6 THE COURT: Mr. Biancavilla just made a
7 representation as an officer of the court that he was
8 not.

9 MR. CHAMBERLAIN: If he testified without
10 signing a waiver, then he automatically got immunity.

11 MR. BIANCAVILLA: That's an operation of law.
12 Nobody gave him immunity. He was called as a witness
13 to a --

14 THE COURT: Mr. Chamberlain, you're an
15 experienced criminal attorney. You understand this.

16 MR. CHAMBERLAIN: No. It's the People's
17 choice to subpoena someone before the grand jury and
18 they then make a determination whether or not to
19 request the waiver.

20 THE COURT: Mr. Biancavilla has just told you
21 as an officer of the court that there was no waiver of
22 immunity.

23 MR. CHAMBERLAIN: It's taken this argument
24 for me to find that out, Judge.

25 THE COURT: Mr. Chamberlain, if you can point

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1 to a section of the Criminal Procedure Law --

2 MR. BIANCAVILLA: Mr. Chamberlain, was given
3 John Kane's grand jury testimony and, if he read it, he
4 would have seen clearly that at no time he was asked to
5 sign a waiver of immunity. I am sure Mr. Chamberlain
6 knows after 40 years of practice that all of that is on
7 the record.

8 MR. CHAMBERLAIN: I will ask Mr. Kane about
9 any arrangements made before he was subpoenaed.

10 THE COURT: Mr. Chamberlain, you certainly
11 can ask Mr. Kane on cross-examination.

12 MR. CHAMBERLAIN: I will, Judge.

13 THE COURT: Counsel, are we ready for the
14 jury now?

15 THE DEFENDANT: A moment, your Honor? Can I
16 speak to him?

17 THE COURT: Yes.

18

19 THE COURT: Anything further, Counsel?

20 MR. CHAMBERLAIN: One second.

21 We are ready.

22 THE COURT: We'll get the jury.

23 (Whereupon, there was a brief pause in the
24 proceedings.)

25 MR. CHAMBERLAIN: Judge, before the jury

Proceedings

1 comes in, I have something further.

2 THE COURT: Yes?

3 MR. CHAMBERLAIN: I have one further matter I
4 would like to bring up with respect to
5 cross-examination.

6 I have another witness who would corroborate
7 the testimony of Stephanie Domaradzki regarding
8 purchases in the Downtown who indicated that Mr. Kane
9 was barred the year prior --

10 THE COURT: Was this witness present during
11 the alleged drug transaction?

12 MR. CHAMBERLAIN: I am trying to recall the
13 witness' testimony.

14 THE COURT: I won't let you have this witness
15 testify to hearsay. Excuse me. I won't let you
16 cross-examine Mr. Kane with respect to hearsay.

17 MR. CHAMBERLAIN: All right, Judge. I don't
18 know that he was present. I know that Mr. Kane,
19 according to this witness, was barred for drug sales in
20 the Downtown.

21 THE COURT: If you were to give me a good
22 faith basis with respect to that witness, that's a
23 different story.

24 MR. CHAMBERLAIN: I have a statement from
25 that witness but I don't believe he was present -- I

Proceedings

1 know he was -- he was -- the person that barred Kane
2 from the Downtown for drug sales and he was aware of
3 Kane making drug sales.

4 THE COURT: If you can tell me, based on
5 that, there's a good faith basis as to him being
6 present during the alleged drug sale, otherwise you
7 cannot.

8 MR. CHAMBERLAIN: I don't have a specific
9 reference in the statement as to whether he was present
10 so I can't so represent to the Court. He indicates
11 that he did, while acting as a doorman or bouncer, on
12 the instructions of the owner, bar Mr. Kane for drug
13 sales. He indicated that Mr. Kane -- there were
14 various customer who would ask for John Doe when they
15 wanted to by cocaine. He talked about one or two
16 specifics with respect to that but he doesn't indicate
17 his presence at that time. I haven't asked him that
18 question. I would have to find out whether he was or
19 not.

20 THE COURT: Okay. We can proceed,
21 Mr. Chamberlain?

22 MR. CHAMBERLAIN: Yes, Judge.

23 I'm not to ask about this?

24 THE COURT: Yes.

25 COURT OFFICER: Jury entering.

People - Kane - Cross

1 (Whereupon, the sworn jurors entered the
2 courtroom and resumed their respective seats.)

3 THE CLERK: Both sides stipulate all sworn
4 jurors are present and seated properly?

5 MR. BIANCAVILLA: So stipulated.

6 MR. CHAMBERLAIN: Yes.

7 THE COURT: Good afternoon, ladies and
8 gentlemen. We are ready to proceed with the trial.

9 Ask Mr. Kane to come in, please.

10 (Whereupon, the witness resumed the witness
11 stand.)

12 THE CLERK: Mr. Kane, you are reminded you
13 are under oath. You may be seated.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Chamberlain, you may inquire.

16 MR. CHAMBERLAIN: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. CHAMBERLAIN:

19 Q Mr. Kane, your appearance today is different than
20 it was in April of 2000?

21 A Is different?

22 Q Yes. Did you wear a moustache at that time?

23 A No.

24 Q Is your hair groomed differently than it was then?

25 A It's blonder now.

People - Kane - Cross

1 Q Now, you indicated you were currently employed; is
2 that correct?

3 A Yes.

4 Q Would you tell us by whom?

5 A Mike Buttino.

6 Q How do you spell that?

7 A B-U-T-T-I-N-O.

8 Q Who is Mike Buttino?

9 A Excuse me?

10 Q Who is he?

11 A He's my boss.

12 Q What does he do? Is it a company?

13 A He owns J and B Floor Covering.

14 Q Where are they located?

15 A Bohemia.

16 Q What kind -- they install floors, is that it?

17 A Correct.

18 Q Are you an employee on the books of that company?

19 A Yes.

20 Q And you get payroll, you get paid?

21 A Correct.

22 Q Now, when you were -- were you employed back in
23 April of 2000?

24 A No. I was doing odd jobs.

25 Q Doing odd jobs?

People - Kane - Cross

1 A Yes.

2 Q Would you tell us how long -- what odd jobs you
3 had just prior to the period you testified to here, April
4 12th, 2000?

5 A I was doing a dormer job with a David Duval.

6 Q How many days was that?

7 A Couple of weeks.

8 Q What couple of weeks was that?

9 A This is previous to the murder.

10 Q Weren't you questioned by one of the homicide
11 detectives about your prior employment?

12 A Excuse me?

13 Q Do you recall a Detective Parpan?

14 A No, I do not.

15 Q Do you recollect a Detective McHugh?

16 A Yes.

17 Q Do you recall when you were brought in on May 2nd
18 being asked about your prior employment?

19 A I don't recall.

20 Q Do you recall telling them that you worked for two
21 days and that you hadn't worked for a couple of months
22 before that?

23 A Could be, right.

24 Q Could be right?

25 A I did a dormer back in 2000 with Dave Duval. It

People - Kane - Cross

1 took about two weeks to do.

2 Q Mr. Kane, at that point in time were you a heavy
3 drinker?

4 A Yes.

5 Q Did you drink three or four days a week heavy?

6 A Yes.

7 Q If, in fact, you had not worked other than two
8 days in the prior two months, where did you get the income
9 to support yourself?

10 A I did odd jobs. People lent me money. My sister
11 was always able to take care of me.

12 Q How long a period of time did people lend you
13 money?

14 A Until I did an odd job and was able to pay them
15 back.

16 Q Did you file an income tax return for the year
17 2000?

18 A No.

19 Q What about the year 1999?

20 A No.

21 Q 1998?

22 A No.

23 Q 1997?

24 MR. BIANCAVILLA: Objection. Relevancy.

25 THE COURT: Overruled.

People - Kane - Cross

1 Q 1997, did you?

2 A No.

3 Q Did you get free drinks when you were drinking
4 three or four day a week?

5 A Did I get free drinks?

6 Q Yes.

7 A No. I had a tab.

8 Q You had a tab. Did you pay that tab?

9 A Excuse me?

10 Q Did you pay the tab?

11 A Yes.

12 Q Where did you get the cash to pay the tab?

13 A I would do odd jobs.

14 Q What kind of odd jobs?

15 A I would do a floor, a kitchen floor. I would work
16 with Duval putting in a closet, anything for a couple of
17 bucks.

18 Q Isn't it a fact that you sold drugs during that
19 period?

20 A No.

21 Q No?

22 A No.

23 Q Didn't you sell drugs to a young lady by the name
24 of Stephanie Domaradzki?

25 A Never heard the name.

People - Kane - Cross

1 Q Never heard the name. Did you sell drugs to a
2 young lady who was a friend of Ruth's who partied with Ruth
3 just prior to the murder?

4 MR. BIANCAVILLA: Date and time, please.

5 THE COURT: He said just prior to the murder.

6 Overruled.

7 Q How about April 11th, 2000?

8 A No.

9 Q No?

10 A No.

11 Q What about Charles Ball, do you know Charles Ball?

12 A Yes, I believe so.

13 Q Did you sell drugs to Charles Ball at any time?

14 A No.

15 Q Never?

16 A No.

17 Q What about Jennifer Hartman?

18 MR. BIANCAVILLA: Again, I would ask for a
19 date and time, if, in fact, there was one.

20 MR. CHAMBERLAIN: He said never.

21 MR. BIANCAVILLA: It's not a proper question.

22 THE COURT: I'll permit the question.

23 A What was the question?

24 Q Mr. Biancavilla would like me to ask you --

25 THE COURT: Excuse me. No commentary. Just

People - Kane - Cross

1 ask questions.

2 Q With respect to Charles Ball, did you sell him
3 drugs in or about August of 1998?

4 A No, I did not.

5 Q Jennifer Hartman, do you know Jennifer Hartman?

6 A No.

7 Q Let me ask you, Mr. Kane, do you know the Falcon's
8 Nest?

9 A Yes.

10 Q Do you know the Downtown?

11 A Yes.

12 Q Do you know Granny's?

13 A Yes.

14 Q Do you know Y.L. Childs?

15 A Yes.

16 Q Do you frequent all of those places on a regular
17 basis?

18 A What was the question?

19 Q Did you frequent all of those places on a regular
20 basis?

21 A Yes.

22 Q Drinking heavily three or four nights, three or
23 four days a week at least?

24 A Correct.

25 Q And you didn't know any of these people? You

People - Kane - Cross

1 didn't know Jennifer Hartman?

2 A No.

3 Q Do you recall an incident in the Falcon's Nest in
4 about 1997 when after selling drugs to Jennifer Hartman she
5 grabbed money off the bar because you had cut the drugs,
6 they were not what you represented, and you started to have
7 a physical altercation with her and choke her?

8 MR. BIANCAVILLA: Objection as to the form.

9 THE COURT: Do you understand the question,
10 Mr. Kane?

11 THE WITNESS: Yes.

12 THE COURT: Overruled.

13 A No.

14 Q Never happened?

15 A No?

16 Q Do you know, Mr. Kane -- when this thing all
17 happened, you had an attorney at the outset; is that right.

18 A I did, yes.

19 Q Who was that attorney?

20 A I can't remember his name. I had him for one day.

21 Q And that was when you were about to testify in
22 this case?

23 A When I went in to talk to the DA, I brought an
24 attorney and I had him for one day and I didn't need him
25 anymore.

People - Kane - Cross

1 Q When you said when you went in to talk to the DA,
2 will you tell us when that was?

3 A I don't know the date.

4 Q Let me see if I can help you there a little bit.
5 You gave certain statements on various dates to detectives;
6 is that right?

7 A Right.

8 Q And then you testified in May at a preliminary
9 examination in this case, may of 2000, do you recall that?

10 A Yes.

11 Q That was in district court over -- actually it's
12 in this building; right?

13 A Yes.

14 Q After that in July of 2000, you testified before a
15 grand jury; is that right?

16 A Yes.

17 Q With respect to that frame work of time, when was
18 it that you went in to see the DA with this attorney?

19 A This was before the first hearing.

20 Q Before the first hearing?

21 A Yes.

22 Q The preliminary examination?

23 A Yes.

24 Q And you were subpoenaed by the People to testify
25 in that case?

People - Kane - Cross

1 A Yes.

2 Q And were you given to understand anything about
3 getting immunity for your testimony?

4 A No.

5 Q No?

6 A For my testimony?

7 Q Do you know what I mean by immunity, Mr. Kane?

8 A No. Explain it.

9 MR. BIANCAVILLA: Objection.

10 THE COURT: Sustained.

11 Q Were you told anything about whether or not you
12 would be not charged with any crimes if you may have
13 testified to -- with respect to the incident you testified
14 to, the transaction you testified to?

15 A Would I be charged? What's the question?

16 Q They told you you would be cut lose, do you
17 understand that?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: Sustained as to form.

20 Q Do you understand -- were you told anything about
21 what would happen after you testified with respect to your
22 possible liability for any of these crimes?

23 MR. BIANCAVILLA: Objection. Assuming facts
24 not in evidence.

25 THE COURT: Yes. Sustained.

People - Kane - Cross

1 Q When you went before the grand jury in this case,
2 were you asked to sign a waiver of immunity?

3 A A waiver of immunity, not that I can remember.

4 Q When you went to talk to the district attorney
5 with that attorney whose name you can't remember, what, if
6 anything, did you understand was the result of that
7 conversation?

8 MR. BIANCAVILLA: Object to the form.

9 THE COURT: Do you understand, Mr. Kane?

10 THE WITNESS: I believe so.

11 THE COURT: You can answer.

12 A Well, that I was going to help the DA. I was
13 going to testify to what had happened and I didn't need an
14 attorney present. My attorney said you don't need me. I
15 wasn't being charged with anything. I didn't commit a
16 crime.

17 Q You weren't being charged with anything. You had,
18 according to your testimony, invited somebody up to the
19 victim's apartment; is that right?

20 A Repeat the question.

21 Q According to your version, you had invited
22 Mr. Scrimo up to the victim's apartment?

23 MR. BIANCAVILLA: Object to the form of the
24 question, according to your version.

25 THE COURT: Sustained as to the word version.

People - Kane - Cross

1 Q According to your testimony --

2 MR. BIANCAVILLA: Again, that's -- objection
3 to the form.

4 THE COURT: I'll permit it.

5 Go ahead, Mr. Chamberlain. Is there a
6 question?

7 Q You invited Mr. Scrimo up to the victim's
8 apartment; right?

9 A I said to Paul, Let's go to Ruthy's.

10 Q According to your testimony, Mr. Scrimo tried to
11 leave that night and you said, no, don't leave, right?

12 A I said, Where are you going? We just got here.
13 We just got the beer. Hang out.

14 Q Then, according to your testimony, you were
15 present when this victim was strangled; is that right?

16 A Correct.

17 Q And you put your hands on Mr. Scrimo's shoulder;
18 is that your testimony?

19 A Yes.

20 Q Did you do anything else, sir?

21 A I pulled on his shoulder.

22 Q You pulled on his shoulder with one hand or both
23 hand?

24 A Both hands.

25 Q Did you do anything else?

People - Kane - Cross

1 A Did I do anything else?

2 Q Did you do anything else to stop what was
3 happening?

4 A No.

5 Q What you say was happening. Did you make any
6 phone calls?

7 A No, I did not.

8 Q Did you leave that place to go get help?

9 A No, I did not.

10 Q And thereafter you helped clean up the scene, did
11 you not?

12 A I grabbed the beer bottles.

13 Q You what?

14 A I grabbed the beer bottles.

15 Q The purpose of grabbing beer bottles was to take
16 evidence out of the scene; right?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained as to form.

19 Q What was your understanding of the reason for
20 grabbing the beer bottles?

21 MR. BIANCAVILLA: Objection.

22 THE COURT: Sustained as to form.

23 Q Was there any discussion between you and the
24 defendant regarding grabbing the beer bottles?

25 A He screamed at me to get the fucking beer bottles.

People - Kane - Cross

1 Q Did he say why?

2 A No, he did not.

3 Q Did you know why at the time?

4 MR. BIANCAVILLA: Objection.

5 THE COURT: Sustained.

6 Q Mr. Kane, you have given a number of statements
7 concerning this incident to the police prior to testifying
8 here, did you not?

9 MR. BIANCAVILLA: Objection. Assuming facts
10 not in evidence.

11 MR. CHAMBERLAIN: Assuming facts not in
12 evidence?

13 THE COURT: I'll permit that.

14 Overruled.

15 A Repeat the question, please.

16 MR. BIANCAVILLA: May I approach, please?

17 MR. CHAMBERLAIN: Let me rephrase.

18 MR. BIANCAVILLA: Briefly, Judge?

19 MR. CHAMBERLAIN: I object to this. I am
20 rephrasing.

21 THE COURT: Are you withdrawing the question?

22 MR. BIANCAVILLA: I am trying to avoid
23 getting up multiple times, Judge.

24 THE COURT: Let's see what the question is.
25 If you still want to come forward, Mr. Biancavilla,

People - Kane - Cross

1 I'll let you.

2 Go ahead, Mr. Chamberlain.

3 Q Were you contacted by the police on April 15th,
4 2000?

5 A I am not sure of the date.

6 Q Two or three days after the incident?

7 A I contacted Detective McHugh.

8 Q Weren't you stopped on the street as you were
9 walking down the street on April 15th?

10 A I am not sure of that date.

11 Q Does that refresh your recollection as to who
12 contacted who?

13 A That was after I called Detective McHugh.

14 Q You called first?

15 A Yes, I did.

16 Q What did you tell Detective McHugh when you saw
17 him on the 15th?

18 A We sat up a meeting.

19 Q At that meeting, what did you tell him?

20 A I told him I didn't know anything about the
21 questions he asked me about this crime.

22 Q Mr. Kane, is it fair to say that you didn't tell
23 the police the night of the incident; right?

24 A Excuse me?

25 Q You didn't say anything -- you didn't call the

People - Kane - Cross

1 police as this was happening or right after it happened?

2 A No, I did not.

3 Q When you got home that night, did you call the
4 police?

5 A No, I did not.

6 Q Did you tell anybody?

7 A No, I didn't.

8 Q Did you go about your normal daily routine?

9 A I tried to.

10 Q Pardon me?

11 A Tried to, yes.

12 Q You tried to. Well, this all happened on a
13 Tuesday, early morning hours of Tuesday, April 12th. Did
14 you do -- what did you do for the following week?

15 A The next week I went to play darts.

16 Q You went to where?

17 A To play darts on a Tuesday night.

18 Q Between that Tuesday and the time you went to play
19 darts, what did you do?

20 A I don't recall exactly.

21 Q But the next Tuesday night you go to play darts,
22 same place you go every Tuesday night?

23 A Correct.

24 Q Did you go there with the defendant, was he there?

25 A He was there, yes.

People - Kane - Cross

1 Q Did you play darts that night?

2 A Yes.

3 Q How long did you play darts?

4 A Until twelve o'clock.

5 Q Same as normal?

6 A Correct.

7 Q And then what did you do for next week?

8 A The Tuesday after?

9 Q What did you do for whole next week before the
10 Tuesday after?

11 A I don't recall.

12 Q Anything unusual or normal routine?

13 A Normal routine.

14 Q The following Tuesday, where did you go? You went
15 back to what bar?

16 A Falcon's Nest.

17 Q Falcon's Nest. What did you do that Tuesday?

18 A Played darts.

19 Q With this defendant?

20 A Correct.

21 Q And who else?

22 A Everybody else that was on the dart team.

23 Q How long did you play darts that time?

24 A Until midnight.

25 Q Then what did you do after darts?

People - Kane - Cross

1 A I went home.

2 Q Now, in between this -- between the date of the --
3 between April 12th and the first time you go to play darts,
4 you have a meeting with Detective McHugh?

5 A Excuse me?

6 Q What?

7 A Can you repeat that.

8 Q April 15th, did you meet with Detective McHugh?

9 A I'm not sure of the date.

10 Q Do you recall meeting with a homicide detective
11 two or three days after the incident?

12 A On a Saturday.

13 Q Did you discuss Ruth?

14 A Yes.

15 Q And what did you tell the detective about Ruth
16 that night?

17 A That I knew her.

18 Q That you knew her?

19 A Correct.

20 Q For how long?

21 A Two years.

22 Q Did you tell -- withdrawn.

23 Were you aware that other people knew that you
24 knew her at the time you saw Detective McHugh; right.

25 MR. BIANCAVILLA: Objection.

People - Kane - Cross

1 THE COURT: Sustained as to form.

2 Q At the time that you met with Detective McHugh on
3 that Saturday after the murder, you were aware that they had
4 been conducting an investigation concerning this matter;
5 right?

6 MR. BIANCAVILLA: Objection.

7 THE COURT: Overruled.

8 A I was aware of what -- can you repeat the
9 question?

10 Q You were aware that the police had been conducting
11 an investigation for those three days, who knew the victim
12 and so forth?

13 A Correct.

14 Q And you were aware there were numerous people that
15 knew that you knew the victim and had had some prior
16 relationship with her?

17 MR. BIANCAVILLA: Objection. Calls for the
18 operation of several people's minds.

19 MR. CHAMBERLAIN: If he knew.

20 MR. BIANCAVILLA: If he knew, it wouldn't be
21 an exception to the hearsay rule.

22 THE COURT: It would have to be observations,
23 Mr. Chamberlain.

24 Sustained.

25 Q From your knowledge of the investigation that had

People - Kane - Cross

1 been going on or from your conversation with McHugh, you
2 were aware of the fact, were you not, that they had about
3 your prior relationship --

4 A From what they had said to me --

5 MR. BIANCAVILLA: Objection to the form of
6 the question.

7 THE COURT: Sustained.

8 Q Mr. Kane, at that time you told the detective what
9 about your prior relationship?

10 A Can you repeat the question?

11 Q What did you tell McHugh on that Saturday about
12 your relationship with Ruth Williams?

13 A That I knew Ruth.

14 Q That you knew her. That was it?

15 A And that I had sexual relations with her in the
16 past.

17 Q That you had sexual relations with her. Did you
18 tell them what type of sexual relations?

19 A No.

20 Q No. You didn't tell him oral sex?

21 A I don't recall if I said that or not. I didn't
22 get into details with him, no.

23 Q Did you tell him when you had these prior sexual
24 relations?

25 A Did I tell him when?

People - Kane - Cross

1 Q Yes, how long previous to that time.

2 A I don't remember. No. No, I don't think so.

3 Q Did you tell him that you were a boyfriend of
4 hers?

5 A I know they asked me that and I said no.

6 Q You said no. Did you tell him that you had sexual
7 relations with her on one occasion or more?

8 A Did I tell them?

9 Q Did you tell the detective on this particular
10 Saturday whether you had relations one time or more than one
11 time?

12 A I don't recall what I told him.

13 Q Were you asked about the murder and where you were
14 at that time?

15 A Yes.

16 Q And what did you tell them?

17 A I told them I didn't know anything about it.

18 Q Did you tell them that you knew about the murder?

19 A I don't recall. They were asking me about it, I
20 mean.

21 Q Did they ask you about a male white who had a
22 shaved head and tattoos that was in Y.L.Childs?

23 A Yes.

24 Q What did you tell them?

25 A That I didn't know him.

People - Kane - Cross

1 Q According to your testimony here that was untrue;
2 is that correct?

3 MR. BIANCAVILLA: Objection, Judge. Again, I
4 would ask to approach.

5 THE COURT: You can approach.

6 Step down a minute, Mr. Kane

7 (Whereupon, the following took place at the
8 bench outside of the hearing of the jurors and
9 defendant.)

10 THE COURT: Yes, Mr. Biancavilla?

11 MR. BIANCAVILLA: Judge, the basis of my
12 objection is as follows: Whether or not something is
13 untrue or not or whether or not something is a lie or
14 not is not a proper question. That is a conclusion for
15 the jury to draw.

16 The only thing that is proper is as follows:
17 If a defendant seeks to impeach a witness by proving a
18 prior inconsistent statement, a proper foundation must
19 be laid by showing the evidence to be relevant and by
20 asking the witness whether he or she made such
21 statement specifying the time, place, the person to
22 whom it was made and the substance of such inconsistent
23 statement.

24 I have no problem with what has been done up
25 to that point.

People - Kane - Cross

1 THE COURT: Are you reading from a case?

2 MR. BIANCAVILLA: I'll cite the case. It's
3 from Richardson, Judge.

4 MR. CHAMBERLAIN: If I may be heard, Judge?

5 THE COURT: Let Mr. Biancavilla finish.

6 MR. CHAMBERLAIN: Sure.

7 MR. BIANCAVILLA: I'm going to cite for that
8 particular proposition Richardson on Evidence, tenth
9 edition --

10 THE COURT: Richardson.

11 MR. BIANCAVILLA: What addition do you have?

12 THE COURT: I have the eleventh. It should
13 be the same.

14 MR. BIANCAVILLA: It's not. I'll show you
15 mine.

16 In this case, which is People versus
17 Concepcion 175 AD2d 324, and I was reading from that
18 case before, if a defendant seeks to impeach a witness
19 by proving a prior inconsistent statement, a proper
20 foundation must be laid by showing the evidence to be
21 relevant and by asking the witness whether he or she
22 made such statements, specifying the time, the place,
23 the person to whom it was made and the substance of the
24 inconsistent statement.

25 That is all that is permitted, Judge. That

People - Kane - Cross

1 ultimate question -- I'll get Richardson and show you.

2 Here, Judge, 6-411. I have it highlighted.

3 It's the same thing.

4 My point is, you cannot ask a witness, so,
5 you lied? That's not a proper conclusion. That's not
6 a proper question. That's a conclusion he can argue to
7 the jury at some point in time, but you can't argue to
8 the witness because then the question becomes
9 argumentative.

10 THE COURT: Mr. Chamberlain?

11 MR. CHAMBERLAIN: Yes, Judge.

12 THE COURT: Yes?

13 MR. CHAMBERLAIN: Judge, we have -- this case
14 is not on point because the witness made the prior
15 statement and it clearly is contradicting his
16 testimony.

17 THE COURT: I understand that. I have no
18 problem with that part of it.

19 MR. CHAMBERLAIN: And -- and his -- it's
20 clear to everybody that this is a direct contradiction.
21 He was not there. He was --

22 THE COURT: The question is whether you
23 should be allowed to ask the general question, so
24 therefore you're not telling the truth or therefore you
25 are lying.

People - Kane - Cross

1 You have an absolute right to argue to the
2 jury all those inconsistencies and make that argument.

3 MR. CHAMBERLAIN: I'm not merely arguing
4 before a jury, Judge. I think it's fair to bring out
5 this statement. It's already in. This case doesn't
6 apply. The statement is was he aware when he was --

7 THE COURT: Your last question,
8 Mr. Chamberlain, was so therefore you are not telling
9 the truth.

10 MR. CHAMBERLAIN: No.

11 THE COURT: That was your last question on
12 the record.

13 MR. CHAMBERLAIN: No, that wasn't my last
14 question.

15 THE COURT: Is that correct?

16 MR. BIANCAVILLA: Absolutely.

17 THE COURT: I'll ask the reporter to read me
18 back the last question.

19 MR. CHAMBERLAIN: Judge, I will say --

20 (Whereupon, the court reporter read back the
21 requested question.)

22 THE COURT: I understand your case,
23 Mr. Biancavilla, with respect to what needs to be
24 placed in evidence with respect to foundation for a
25 prior inconsistent statement. The question whether

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1 somebody is telling the truth, that by itself is not a
2 proper question.

3 However, if Mr. Chamberlain asked the
4 question, therefore, for example, what you told the
5 detectives on that date is not the truth --

6 MR. CHAMBERLAIN: Whether or not he asked.

7 THE COURT: On April 18th. He can respond.

8 MR. BIANCAVILLA: No, he can't, because that
9 is a question of fact and the only people that are fact
10 finders in this courtroom are the jury. Okay.

11 That is what I am saying, Judge. Only the
12 jury can find whether a witness is being truthful or
13 not. He can argue until the cows come home on his
14 summation that because there was an inconsistent
15 statement between April -- April 15th and his testimony
16 today, that he's a liar. I don't care how many times
17 he calls him a liar. He can do that.

18 My point is that the jury in this courtroom
19 is the fact finder and only they can make the
20 determination. That's my point.

21 THE COURT: Credibility is an --

22 MR. CHAMBERLAIN: That's not the issue.

23 THE COURT: I understand Mr. Biancavilla's
24 argument, although his case doesn't lie exactly on
25 point. It makes perfect sense that, in essence, you're

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1 asking the witness to do what the jury is supposed to
2 do, and the jury is -- and it's supposed to be the
3 arbiter with respect to the issues of fact. I will
4 tell them how to address prior inconsistent statements
5 in my charge.

6 MR. CHAMBERLAIN: Judge, he has already
7 indicated it's untrue.

8 THE COURT: You made your point.

9 MR. CHAMBERLAIN: I understand. Part of the
10 problem with this is it's not -- he is interrupting my
11 cross on something -- and he's doing it constantly.

12 THE COURT: I'll not permit him to interrupt
13 your cross.

14 MR. CHAMBERLAIN: Every time we come up here
15 it's an interruption.

16 THE COURT: He has a legitimate point to
17 bring to my attention and in essence he's right.

18 MR. CHAMBERLAIN: Judge, a witness aware of
19 whether he told -- his awareness of whether he told a
20 lie to the police is material.

21 THE COURT: You're talking about something
22 different here.

23 MR. CHAMBERLAIN: The question was when you
24 told --

25 THE COURT: Mr. Chamberlain, may --

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1 MR. CHAMBERLAIN: May I finish?

2 THE COURT: You are going back to the same
3 question before.

4 MR. CHAMBERLAIN: The last question here was
5 what you told the police on April 15th was not true.
6 That was the question. She just read it back. That
7 was the question.

8 MR. BIANCAVILLA: My argument is the same,
9 Judge.

10 MR. CHAMBERLAIN: That's the question.

11 MR. BIANCAVILLA: He elicited all of the
12 individual facts that he told the police on that
13 particular day. Now, I'm sure he's going to elicit all
14 the individual facts about what he told the police on
15 May 2nd and what he then told this jury.

16 MR. CHAMBERLAIN: I'm entitled to probe in
17 cross-examination.

18 MR. BIANCAVILLA: That's not probing.

19 MR. CHAMBERLAIN: If the witness is aware he
20 lied to the police, I am entitled. The jury will be
21 the ultimate arbiter about who is telling the truth, no
22 question. But I shouldn't be prevented from bringing
23 out that he lied to the police with knowledge.

24 THE COURT: You can ask the question as to
25 whether -- what the witness told -- if his memory is

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1 better, for example, today or on -- back then.

2 MR. CHAMBERLAIN: No. This is what he told
3 the police on the 15th of April, Judge, 2000, and the
4 question is when he told them that, was he aware that
5 was a lie.

6 THE COURT: I understand your argument.

7 My ruling is I will permit you,
8 Mr. Chamberlain, to ask that question.

9 MR. CHAMBERLAIN: Thank you, Judge.

10 (Whereupon, the following took place in open
11 court.)

12 THE COURT: Will you read back the last
13 question for the witness, please.

14 (Whereupon, the court reporter read back the
15 requested question.)

16 Q Referring, Mr. Kane, to what you told the
17 detective on the Saturday after the murder.

18 A What did I tell him?

19 Q You told him you weren't there; right? You told
20 him you didn't know any male white with a shaved head and
21 tattoos?

22 A Right, that's what I told him.

23 Q And that was untrue; right?

24 A Yes.

25 Q Now, you then go and play darts the next two

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1 Tuesday nights. Did you have any further contact with the
2 police?

3 A Just -- yeah, I did.

4 Q When was that, Mr. Kane?

5 A I'm not sure of the date.

6 Q If I tell you there's been testimony here that you
7 were picked up on the street in Farmingdale the afternoon of
8 May 2nd, approximately two or more weeks later, May 2nd,
9 2000, does that refresh your recollection?

10 A That sounds about right.

11 Q What were you doing when the police arrived at
12 that point?

13 A I was walking into town.

14 Q Who arrived at that point?

15 A Detective McHugh.

16 Q Was it just McHugh?

17 A I believe there was another officer there.

18 Q And what happened after they arrived?

19 A They asked me if I wanted to come and answer some
20 questions about what we had talked about that Saturday.

21 Q And you said sure, I'd love to?

22 A I said yes and I went with them.

23 Q You want to come?

24 A Excuse me?

25 Q Did you say you want to come?

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1 A I said yes and I went with them.

2 Q Did you call an attorney before you went with
3 them?

4 A No.

5 Q Were you advised of any rights at that time?

6 A No.

7 Q About what time in the afternoon was it when you
8 were -- when you were went with them?

9 A Five.

10 Q And were you then -- where did you go, by the way,
11 Mr. Kane?

12 A Police headquarters.

13 Q And did you go into an interrogation room or
14 interview room in homicide?

15 A Yes.

16 Q Who was there at that point?

17 A Detective McHugh and another detective.

18 Q Does the name Parpan refresh your recollection?

19 A No, it does not.

20 Q Was the other detective a fairly large man?

21 A No, not that I recall. No.

22 Q Do you recall what happened at that point?

23 A I told them about what had really happened.

24 Q You told them about what had really happened and
25 did you tell them that right off, Mr. Kane?

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1 A No, I didn't.

2 Q So you didn't tell them what really happened. You
3 told them a lot of other stuff first; correct?

4 A Correct.

5 Q Did you tell them about your prior problems with
6 the law?

7 MR. BIANCAVILLA: Objection. Again, we are
8 going to have to approach, Judge.

9 THE COURT: Come forward.

10 (Whereupon, the following took place at the
11 bench outside the hearing of the jurors and
12 defendant.)

13 MR. BIANCAVILLA: Judge, for the record, the
14 only criminal history that this individual has is a
15 plea to possession of marijuana which occurred in
16 Ulster County.

17 Now, apparently when he was interviewed by
18 the police, he made reference to an incident that
19 happened in Kansas or Kentucky, I don't remember which
20 state, when he was 16 years old and a petit larceny
21 that occurred somewhere around 11 or 12 years ago.

22 Now, there's no criminal record with respect
23 to any of those.

24 THE COURT: You think he got a youthful
25 offender adjudication?

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1 MR. BIANCAVILLA: There's no record of it and
2 it's something that happened when he was 16 years old
3 which is not probative of anything here.

4 The only thing that is probative is this
5 conviction which we have provided a copy of the
6 certificate of disposition to Mr. Chamberlain.

7 With respect to any cross-examination on
8 criminal conduct, he should only be asked what he was
9 convicted of, not what he was arrested for. That's
10 what I'm speaking of. He was convicted of possession
11 of marijuana.

12 THE COURT: These were dismissals, dismissed
13 in satisfaction, or?

14 MR. BIANCAVILLA: I wasn't there, Judge.
15 This is the certificate of disposition they gave me.

16 THE COURT: Mr. Chamberlain?

17 MR. CHAMBERLAIN: Judge, in the first place,
18 I am entitled to ask him about prior statements and
19 these statements include declarations against his
20 interest. I am entitled to ask on that basis. The
21 fact that Mr. Biancavilla says he hasn't found a prior
22 record from, it's not --

23 MR. BIANCAVILLA: Since he was 16 years old.

24 MR. CHAMBERLAIN: I don't care.

25 Please, don't interrupt.

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1 Under New York law, 16 years old --

2 THE COURT: What do you want to ask,
3 Mr. Chamberlain?

4 MR. CHAMBERLAIN: His statement was not only
5 was he arrested in Kansas for robbery, but he did eight
6 months time. It's not just an arrest. He did time.

7 MR. BIANCAVILLA: When he was 16 years old.

8 MR. CHAMBERLAIN: He also told the detective.
9 And Judge Ort has it in his decision about this man's
10 credibility and his credibility in front of these
11 detectives is an issue in this case. It's an issue and
12 these are declarations against prior interest. It's
13 not a question of his prior record.

14 I have a right to ask him what he told them.
15 He also told them there is a stolen auto, petit larceny
16 in Suffolk, and then this drug case which resulted in
17 that conviction.

18 THE COURT: What I want to ask him is with
19 respect to the Kentucky case?

20 MR. CHAMBERLAIN: I want to ask him what he
21 told the detectives.

22 MR. BIANCAVILLA: Judge, when he was 16 years
23 old? Just because he told the detective doesn't make
24 it admissible at trial.

25 THE COURT: It effects his credibility,

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1 Mr. Biancavilla.

2 MR. BIANCAVILLA: What's it probative of?

3 It's when he was 16 years old.

4 MR. CHAMBERLAIN: His credibility is crucial
5 here.

6 MR. BIANCAVILLA: This is ridiculous. I'll
7 sit down.

8 THE COURT: A person who has been convicted
9 of a crime is a competent witness, but the conviction
10 may be proved for the purpose of affecting the weight
11 of his testimony, either by cross-examination, upon
12 which he shall be required to answer any relevant
13 question, or by the record. The party cross-examining
14 is not concluded by such person's answer. This general
15 rule allowing impeachment by showing conviction is
16 subject to important limitations to, when applied to
17 the accused as a witnesses, which is People versus
18 Sandoval which is relevant here.

19 It has always been the rule that conviction
20 must be of a crime, either of a felony or misdemeanor.
21 Thus, it has been held that since a police offense is
22 not a crime, a conviction of such offense cannot be
23 shown to affect the witness' credibility.

24 We have a possession of of marijuana which is
25 a violation. That would not be permissible.

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1 Similarly, the fact that the witness has been
2 adjudicated youthful offender, juvenile delinquent,
3 wayward minor, or youthful offender, cannot be shown,
4 for these adjudications are not convictions of a crime.
5 The adjudication may not be admissible, but the
6 cross-examiner may elicit the conduct underlying the
7 adjudication. So, too, the fact that the witness had
8 been convicted a traffic infraction cannot be shown to
9 affect his credibility.

10 MR. CHAMBERLAIN: I'm not looking to show the
11 convictions, Judge. I am looking to show that --

12 MR. CHAMBERLAIN: Even the case that was
13 dismissed is not the issue. I am entitled to ask him
14 about statements he made that are against his own
15 interest when his credibility was an issue here and it
16 certainly is in this trial. It's crucial in this
17 trial, his credibility, and what he was telling these
18 detectives. I am entitled to ask him.

19 THE COURT: I have no indication here with
20 respect to that.

21 What is the alleged crime, Mr. Chamberlain?

22 MR. CHAMBERLAIN: Robbery.

23 THE COURT: As to whether he got YO or
24 youthful adjudication, no. Do you know they have that
25 in Kansas?

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1 MR. CHAMBERLAIN: It wouldn't be juvenile
2 delinquency here. It would be YO, as your Honor knows.
3 Whether they have it there or --

4 THE COURT: There's also petit larceny in
5 Suffolk 10 to 11 years ago.

6 MR. CHAMBERLAIN: That's what he told them.
7 I am entitled to ask about underlying acts. These are
8 things he said.

9 THE COURT: I will not permit you to go into
10 the possession of marijuana. However, he said here,
11 with respect to the robbery, it says, with Joey,
12 question mark, eight months in jail, dash, dismissed.

13 MR. CHAMBERLAIN: I am entitled to ask him
14 about that. That's what he told the detectives.

15 THE COURT: We are talking apples and oranges
16 here, Mr. Chamberlain. You aren't entitled, if he --

17 MR. BIANCAVILLA: Why ask him anything about
18 his criminal history?

19 MR. CHAMBERLAIN: I can't hear what's being
20 said. I didn't hear Mr. Biancavilla.

21 MR. BIANCAVILLA: My point is, I never
22 questioned him about that, so he hasn't said anything
23 inconsistent. He wants to impeach him with that
24 statement.

25 THE COURT: I'll let --

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1 MR. BIANCAVILLA: If he had a criminal
2 history --

3 THE COURT: I am allowing Mr. Chamberlain to
4 ask him the question if he has been convicted of a
5 crime and you are bound by his answer.

6 MR. BIANCAVILLA: I am not sure he
7 understands this is not a crime.

8 THE COURT: I can't help that.

9 MR. CHAMBERLAIN: I am not talking about
10 that.

11 THE COURT: You can ask him the question
12 whether he has ever been convicted of a misdemeanor or
13 felony.

14 MR. BIANCAVILLA: Thank you.

15 THE COURT: Then, if it's inconsistent with
16 what he told the police officers, you can cross-examine
17 him with respect to that.

18 MR. BIANCAVILLA: My point is how would that
19 be inconsistent if he said it was dismissed.

20 THE COURT: It would not be. I understand
21 that.

22 MR. BIANCAVILLA: Thank you.

23 (Whereupon, the following took place in open
24 court.)
25

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1 CONTINUED CROSS

2 BY MR. CHAMBERLAIN:

3 Q Mr. Kane, were you convicted of a crime in Kansas?

4 MR. BIANCAVILLA: Objection. That wasn't the
5 question.

6 THE COURT: No, that wasn't the question.

7 Q Were you ever convicted of a crime?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Were you ever convicted of a
10 felony or misdemeanor?

11 THE WITNESS: No.

12 Q Did you tell the Detective McHugh and the other
13 detective --

14 MR. BIANCAVILLA: I object again.

15 Q -- that you had swerved eight months --

16 THE COURT: Sustained.

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained.

19 Come forward, please.

20 Ladies and gentlemen, we are taking a short
21 break at this time.

22 Do not discuss the case amongst yourselves or
23 with anyone else. Keep an open mind. Do not form or
24 express any opinions until the entire case has been
25 completed.

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1 Do not read or listen to any accounts of the
2 case should they be reported in the media. Do not
3 visit or view any place or premises that have been
4 mentioned.

5 You are not to permit any party to discuss
6 the case with you or attempt to influence you, and you
7 must promptly report to the Court any violation
8 thereof.

9 (Whereupon, the sworn jurors exited the
10 courtroom.)

11 THE COURT: Mr. Chamberlain, as I told you at
12 the bench, you are bound by the answer of what the
13 defendant told you. I told you not to ask that
14 question because what's in there is not inconsistent
15 because he told the police officers it was dismissed.

16 MR. CHAMBERLAIN: I am not sure that's what
17 he told the police officers, Judge. But your Honor
18 said I could cross-examine him and after he said no,
19 which he has obviously been prepared to say by the
20 district attorney, after he said no, I could
21 cross-examine him on what he told the detectives.

22 THE COURT: If it was inconsistent.

23 MR. CHAMBERLAIN: Judge, he said robbery.
24 That is certainly a felony.

25 THE COURT: Convictions, Mr. Chamberlain, not

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1 dismissals.

2 MR. CHAMBERLAIN: He said he spent eight
3 months in jail.

4 THE COURT: But it might have been dismissed.
5 That happens once in a while.

6 MR. CHAMBERLAIN: I am entitled to question
7 him on that, Judge. Judge Ort, who read this hearing
8 transcript when this detective was questioned, put in
9 his decision on probable cause and the Huntley
10 decision, he said Mr. Kane has a reputation, including
11 prior arrest and serving time for robbery in Kansas,
12 along with other things. That's in the decision.
13 That's the way he interpreted.

14 THE COURT: That was a statement of fact
15 Judge Ort placed in his decision.

16 MR. CHAMBERLAIN: That was after a hearing I
17 took part in where these detectives testify --

18 THE COURT: What's that got to do with today?

19 MR. CHAMBERLAIN: You told me I could
20 cross-examine.

21 THE COURT: You could have shown him the
22 notes and asked if it refreshed his recollection.

23 MR. BIANCAVILLA: Judge, you were correct, if
24 he did not testify inconsistently, if he did not
25 testify inconsistently, you cannot impeach someone with

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1 something that is not inconsistent just to put it in
2 front of the jury.

3 THE COURT: Give me the notes to read in the
4 record.

5 MR. CHAMBERLAIN: Fine. I'll show your Honor
6 a --

7 THE COURT: Counsel, excuse me. I have the
8 floor.

9 MR. CHAMBERLAIN: He's interrupting, Judge.

10 THE COURT: I don't want either one of you
11 interrupting.

12 Arrest, Kansas, a 16 year old, dash, robbery,
13 dash, with Joey, question mark, and Dave, question
14 mark, eight months in jail, dismissed.

15 Mr. Chamberlain, that's what he said. Now,
16 when you asked him the question were you ever convicted
17 of a felony or misdemeanor, he answered no. There's
18 nothing inconsistent here. Perhaps this might refresh
19 his recollection as I said before.

20 Additionally, as I said before, sometimes
21 people are arrested and cases get dismissed.

22 MR. CHAMBERLAIN: Yes, Judge. I understand
23 that.

24 My recollection is that there was more to it.
25 I am looking for the decision at the hearing.

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1 MR. BIANCAVILLA: Judge --

2 MR. CHAMBERLAIN: Please, let me finish.

3 THE COURT: Let Mr. Chamberlain finish.

4 MR. BIANCAVILLA: Sorry, Judge.

5 MR. CHAMBERLAIN: But, your Honor, whether
6 this was dismissed -- I don't recall that from the
7 hearing. I recall maybe after the fact it was
8 dismissed, and maybe it's referring to the next thing
9 which was an auto stolen in Pennsylvania.

10 THE COURT: Mr. Chamberlain, mark it for ID
11 and ask if it refreshes his recollection.

12 MR. CHAMBERLAIN: I will do that, Judge.

13 THE COURT: We'll take a short break.

14 (Whereupon, a brief recess was taken.)

15 THE COURT: Bring the jury in.

16 COURT OFFICER: Jury entering.

17 (Whereupon, the sworn jurors entered the
18 courtroom and resumed their respective seats.)

19 THE CLERK: Do both side stipulate that all
20 sworn jurors are present and seated properly?

21 MR. BIANCAVILLA: So stipulated.

22 MR. CHAMBERLAIN: So stipulated.

23 THE COURT: Bring in the witness, please.

24 (Whereupon, the witness resumed the witness
25 stand.)

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1 THE CLERK: You are reminded you are still
2 under oath, sir.

3 THE COURT: Mr. Chamberlain.

4 MR. CHAMBERLAIN: Thank you, Judge.

5 CONTINUED CROSS

6 BY MR. CHAMBERLAIN:

7 Q Before I go further, Mr. Kane, I notice a rather
8 prominent tattoo on your neck. Did you have that tattoo in
9 April of 2000?

10 A Yes.

11 Q Going back to the question of the area when you
12 were being questioned by detectives -- Detective McHugh and
13 that other detective, I want to show you some --

14 THE COURT: Do you want that marked,
15 Mr. Chamberlain?

16 MR. CHAMBERLAIN: I guess we will.

17 (Whereupon, the above-mentioned item was
18 marked as Defendant's Exhibit Y for identification
19 only.)

20 COURT OFFICER: Defendant's Y marked for
21 identification.

22 Q Defendant's Y is a nine page document. I would
23 direct your attention to the second page and ask you to read
24 at the bottom of that page.

25 Do those notes refresh your recollection as to

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1 what you told the detectives on May 2nd regard a prior
2 incident in Kansas?

3 MR. BIANCAVILLA: Objection.

4 THE COURT: Sustained. That's not the
5 question.

6 Q Do they refresh your recollection as to what
7 occurred in Kansas?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Sustained.

10 Mr. Kane, does that document refresh your
11 recollection as to whether you ever were convicted of
12 either a felony or misdemeanor?

13 THE WITNESS: That was the question?

14 THE COURT: Read back the question to the
15 witness, please.

16 (Whereupon, the court reporter read back the
17 requested question.)

18 THE WITNESS: A misdemeanor? Is that what
19 you are asking about, the upstate?

20 MR. BIANCAVILLA: Judge, I object.

21 THE COURT: Sustained.

22 The jury should disregard that.

23 That's a yes or no, Mr. Kane. Can you answer
24 that question with a yes or no answer? Does that
25 document refresh your recollection as to whether you

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1 were ever convicted of a felony or misdemeanor?

2 THE WITNESS: Yes.

3 THE COURT: Ask another question.

4 Q With your recollection refreshed, can you tell us
5 now what your recollection is?

6 MR. BIANCAVILLA: Objection.

7 THE COURT: Sustained.

8 MR. CHAMBERLAIN: Was that sustained?

9 THE COURT: Yes, it was, Mr. Chamberlain.

10 Q Will you tell us whether or not you were ever
11 convicted of a felony or misdemeanor?

12 A Yes.

13 Q Where was that?

14 A Where was that?

15 Q Yes.

16 A Upstate.

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained.

19 MR. BIANCAVILLA: Move to strike, Judge.

20 THE COURT: Counsel, come forward.

21 Let's proceed. The last objection was
22 sustained. The jury should disregard that

23 Q Did that document refresh your recollection as to
24 any convictions in the state of Kansas?

25 MR. BIANCAVILLA: Objection.

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1 THE COURT: Sustained.

2 Q Does that document refresh your recollection as to
3 whether or not you were incarcerated for any period of
4 time --

5 MR. BIANCAVILLA: Objection.

6 THE COURT: Sustained.

7 MR. BIANCAVILLA: Move to strike, Judge.

8 THE COURT: The jury should disregard the
9 last question.

10 Q Other than your recollection being refreshed for
11 upstate --

12 MR. BIANCAVILLA: Judge, I am going to
13 object.

14 MR. CHAMBERLAIN: He doesn't let me finish a
15 sentence.

16 MR. BIANCAVILLA: Because everything he does
17 here is improper.

18 MR. CHAMBERLAIN: I object to that and ask
19 for a mistrial.

20 THE COURT: Mr. Chamberlain, anything you
21 have to say is at the bench.

22 Ladies and gentlemen, we are going to take a
23 short break.

24 Do not discuss the case amongst yourselves or
25 with anyone else. Keep an open mind. Do not form or